UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and STATE OF WISCONSIN, Plaintiffs, v. WISCONSIN PUBLIC SERVICE CORPORATION, Defendant.	Civil Action No. 20-cv-00733

REMEDIAL ACTION CONSENT DECREE FOR THE WISCONSIN PUBLIC SERVICE CORPORATION MARINETTE MANUFACTURED GAS PLANT SUPERFUND ALTERNATIVE SITE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency (EPA) and the State of Wisconsin (the "State"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606 and 9607.

B. The United States and State in their complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (DOJ), and the State for response actions at the Wisconsin Public Service Corporation (WPSC) Marinette Former Manufactured Gas Plant (MGP) Superfund Alternative Site in Marinette, Wisconsin ("Site"), together with accrued interest; and (2) performance of response actions by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (NCP).

C. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Wisconsin (the "State") on June 12, 2018, of negotiations with potentially responsible party (PRP) regarding the implementation of the remedial action (RA) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree (CD).

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration ("NOAA") on September 27, 2017, of negotiations with the PRP regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendant, Wisconsin Public Service Corporation, that has entered into this CD ("Settling Defendant" or "SD") does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, SD commenced a Remedial Investigation and Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430.

G. SD completed a Remedial Investigation (RI) Report on January 22, 2014, and SD completed a Feasibility Study (FS) Report on July 24, 2017.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 16, 2017, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the administrative record upon which the Superfund Division Director, EPA Region 5, based the selection of the response action, is available for review.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (ROD), executed on September 27, 2017, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. On March 26, 2018, EPA and SD entered into an Administrative Order on Consent for Remedial Design for SD to design the selected remedy for the Site and pay EPA oversight costs. The SD is implementing a Pre-Design Investigation (PDI) that will further define the extent of contamination and site geotechnical conditions, provide additional data for clarifying the parameters of the material to be considered MGP source material/principal threat waste, and collect information to assist EPA and WDNR's consideration of whether alternative remedial approaches are appropriate, particularly where such approaches may be warranted to protect the structural integrity of waste water treatment plant structures and other facilities. If determined by EPA to be warranted, a modification may be made to the selected remedy.

K. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by SD if conducted in accordance with this CD and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SD shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

M. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SD. Solely for the purposes of this CD and the underlying complaint, SD waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. SD shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and the State and upon SD and its successors, and assigns. Any change in ownership or corporate or other legal status of a SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter SD's responsibilities under this CD.

3. SD shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing SD with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SD or its contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SD shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this CD, terms used in this CD that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CD or its appendices, the following definitions shall apply solely for purposes of this CD:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the impacted properties owned by Canadian National Railroad, Marinette Central Broadcasting, the City of Marinette and 1428 Main Street Holding. Approximately 15 acres will be subject to the restrictions and these areas are depicted in Appendix C.

"AOC" shall mean the Administrative Order on Consent for Remedial Design between EPA and WPSC captioned In the Matter of WPSC Marinette MGP Site, Docket No. V-W-18-C-009. The AOC is attached hereto as Appendix A.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this CD and any appendix, this CD shall control.

"Continuing Obligations" shall mean land use restriction that shall be imposed on Affected Property pursuant to Wis. Admin. Code § NR 726.15.

"Day" or "day" shall mean a calendar day. In computing any period of time under this CD, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Date of Notice of RD Completion" shall mean the date upon which EPA issues a notice of completion of the Remedial Design to Settling Defendant.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising SD's performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 31 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIII (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 31 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs SD has agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from and including February 28, 2019 to the Effective Date.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site. The WDNR imposes Continuing Obligations to meet the Institutional Controls requirements.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the AOC Statement of Work ("SOW").

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site from and including February 28, 2019 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Non-Settling Owner" shall mean any person, other than the Settling Defendant, that owns or controls any Affected Property, including Canadian National Railroad, Marinette Central Broadcasting, the City of Marinette and 1428 Main Street Holding. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

"Paragraph" or "¶" shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, the State of Wisconsin, and SD.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through and including February 28, 2019, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

"Plaintiffs" shall mean the United States and the State of Wisconsin.

"Proprietary Controls" shall mean Continuing Obligations that run with the land that (a) limit land, water, or other resource use and (b) are created in accordance with Section 292.12 of the Wisconsin Statutes as such statute exists as of the Effective Date or the Date of Notice of RD Completion, whichever is later.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 27, 2017, by the Director, Superfund Division, EPA Region 5 and all attachments thereto. The ROD is attached as Appendix B.

"Remedial Action" or "RA" shall mean the remedial action selected in the ROD.

"Remedial Action Work Plan" or "RAWP" shall mean the document developed pursuant to the CD and approved by EPA, and any modifications thereto.

"Remedial Design" or "RD" shall mean those activities to be undertaken by SD to develop final plans and specifications for the RA pursuant to the AOC and the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to the AOC and approved by EPA, and any modifications thereto.

"Section" shall mean a portion of this CD identified by a Roman numeral.

"Settling Defendant" or "SD" shall mean Wisconsin Public Service Corporation.

"Site" shall mean the WPSC Marinette MGP Superfund Alternative Site, encompassing approximately fifteen acres, located in Marinette, Wisconsin, and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Wisconsin.

"State Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 23 (Notice to Successors-in-Title), Sections VII (Remedy Review), VIII (Property Requirements) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), and Paragraph 11 (Emergencies and Releases), Paragraph 31 (Access to Financial Assurance), and Paragraph 12 (Community Involvement). State Future Response Costs shall also include all State Interim Response Costs, and all Interest on those State Past Response Costs Settling Defendant has agreed to pay under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from and including February 28, 2019 to the Effective Date.

"Statement of Work" or "SOW" shall mean the document describing the activities SD must perform to implement the RA, and O&M regarding the Site, which is attached as Appendix D.

"Supervising Contractor" shall mean the principal contractor retained by SD to supervise and direct the implementation of the Work under this CD.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.§ 6903(27); and (4) any "hazardous substance" under Wis. Stat. § 292.01.

"WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

"WDNR Database" shall mean the publicly accessible database available on the internet as required by WIS. STAT. §§ 292.12, 292.31, and 292.57. The WDNR Database is accessible at http://dnr.wi.gov/org/aw/rr/brrts/index.htm.

"Work" shall mean all activities and obligations SD is required to perform under this CD, except the activities required under Section XIX (Retention of Records).

"WPSC Marinette Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

V. GENERAL PROVISIONS

5. **Objectives of the Parties**. The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by SD, to pay response costs of Plaintiffs, and to resolve the claims of Plaintiffs against SD.

6. **Commitments by SD**

a. SD shall finance and perform the Work in accordance with the AOC, this CD, the ROD, the SOW, and all work plans, and other plans, standards, specifications, and schedules set forth in this CD, the AOC, or developed by Settling Defendant and approved by EPA pursuant to this CD or the AOC. Upon entry of this CD and as of the Date of the Notice of RD Completion, the work plan and all other plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to the AOC shall be incorporated into and become enforceable under this CD. SD shall pay the United States and the State for Past Response Costs and Future Response Costs as provided in this CD.

b. SD shall comply with the AOC and shall perform all work required under the AOC in accordance with the terms of the AOC, until such time as the AOC is superseded by this CD pursuant to this Paragraph. If EPA determines that SD is in full compliance with the terms and obligations of the AOC as of the Date of the Notice of RD Completion, this CD shall supersede the AOC as of the Date of the Notice of RD Completion with respect to all subsequent obligations. If EPA determines that SD is not in full compliance with the terms and obligations of the AOC as of the Date of the Notice of RD Completion, EPA shall notify SD of what is needed to come into compliance, and both the AOC and this CD shall be in full force and effect until EPA subsequently determines that SD has achieved full current compliance with the terms and conditions of the AOC, at which time this CD shall supersede the AOC. If this CD is not entered by the Court, the AOC shall

not be superseded and this CD shall have no effect on the AOC. Any documents that are required to be submitted under this CD that have been submitted by SD pursuant to the AOC need not be resubmitted after the date that this CD supersedes the AOC, unless EPA determines that such submittal is inadequate. Nothing in this CD shall be deemed to bar the United States from enforcing the AOC for SD's failure to comply with the AOC as of the date of entry of this CD. With respect to violations of the AOC occurring prior to the date that the AOC is superseded by this CD, EPA, at any time (including after the date that the AOC has been superseded by this CD), may seek penalties or punitive damages pursuant to Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), notwithstanding any correction of such violations.

7. **Compliance with Applicable Law**. Nothing in this CD limits SD's obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. **Permits**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SD shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SD may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. **Coordination and Supervision**

a. **Project Coordinators**

(1) SD's Project Coordinator must have sufficient technical expertise to coordinate the Work. SD's Project Coordinator may not be an attorney representing SD in this matter and may not act as the Supervising Contractor. SD's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SD of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the SD of its Project Coordinator and Alternate Project Coordinator. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. SD shall notify the State reasonably in advance of any such meetings or inspections.

(4) SD's Project Coordinators shall meet in person or by teleconference with EPA's and the State's Project Coordinators at least monthly.

b. **Supervising Contractor**. SD's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**

(1) SD shall designate, and notify EPA, within 10 days after the Date of Notice of RD Completion, of the name, title, contact information, and qualifications of the SD's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SD shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SD may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SD's selection.

(3) SD may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of ¶¶ 9.c(1) through 9.c(3), SD has proposed, and EPA has authorized SD to proceed, regarding the following Project Coordinator and Supervising Contractor:

Frank Dombrowski
WEC Energy Group - Business Services
333 W. Everett St. - A231
Milwaukee, WI

Jennifer M. Hagen, PE
Marcus D. Byker, PE
O'Brien & Gere
234 West Florida Street, Fifth Floor
Milwaukee, WI 53204

10. **Performance of Work in Accordance with SOW**. SD shall: (a) perform the RA; and (b) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ 5.6 (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases**. SD shall comply with the emergency and release response and reporting requirements under ¶ 3.3 (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by Plaintiffs), nothing in this CD, including ¶ 3.3 of the SOW, limits any authority of Plaintiffs: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to SD's failure to take appropriate response action under ¶ 3.3 of the SOW, EPA or, as appropriate, the State take such action instead, SD shall reimburse EPA and/or the State under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement**. If requested by EPA, SD shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. **Modification of SOW or Related Deliverables**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, or to modify the schedule in order to coordinate actions with the City and such modification

is consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW and any modifications thereto, then EPA may notify SD of such modification. If SD objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SD shall implement all work required by such modification. SD shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review**. SD shall conduct, in accordance with ¶ 3.7 (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

16. **EPA Selection of Further Response Actions**. If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment**. SD and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **SD's Obligation to Perform Further Response Actions**. If EPA selects further response actions relating to the Site, EPA may require SD to perform such further response actions, but only to the extent that the reopener conditions in ¶ 66 or 67 (United States' Pre- and Post-Certification Reservations) are satisfied. SD may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 66 or 67 are satisfied, (b) EPA's determination that the RA is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 50 (Record Review).

19. **Submission of Plans**. If SD is required to perform further response action(s) pursuant to ¶ 18, it shall submit a plan for such response action(s) to EPA for approval in accordance with the

procedures of Section VI (Performance of the Work by SD). SD shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

20. **Agreements Regarding Access and Non-Interference.** SD shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiffs, providing that such Non-Settling Owner: (i) provide Plaintiffs and the SD, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions). In lieu of negotiating an agreement with any Non-Settling Owner of Affected Property that meets the requirements of (ii) immediately above, SD may provide notification to such Owner in accordance with Wis. Admin. Code § NR 725.07 and ¶20.c. below:

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the State;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 70 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents, consistent with Section XVIII (Access to Information);

(9) Assessing SD's compliance with the CD;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Soil-Any subsurface activity must be conducted in accordance with a Soil Management Plan to ensure proper management of subsurface soil disturbed through future site development, utility repairs, and other intrusive activities;

(2) Groundwater-Construction of potable water wells and consumption of groundwater will be restricted in accordance with Wis. Admin. Code §§ NR 812.09(4);

(3) Sediment-Notification, by phone call and in writing to entities, such as the City of Marinette which owns and maintains Boom Landing Park, and neighboring businesses such as Nest Egg Marine, now under new ownership, and Fincantieri Marinette Marine Corporation, regarding the locations of residual sediment above the remedial action level located under the residual sand cover. The purpose of notification is to prevent future disturbance of residual sand cover. Further, removal of the Reactive Core Mat (RCM) and overlaying riprap and/or contaminated sediment must be completed in accordance with a Sediment Management Plan. Upon notification to the SD that future activities are planned by any entities that would disturb either the residual sand cover or the RCM, the SD must notify EPA by phone call and in writing; and

(4) Soil Gas/Vapor Intrusion- Vapor intrusion risks must be reassessed should any of the following conditions occur:

i. Modification of land use;

ii. Construction of a new buildings; and

iii. Modification to existing buildings that may negatively affect the vapor intrusion pathway.

c. **Proprietary Controls.** Wisconsin DNR will impose Continuing Obligations on all properties with residual contamination including any Non-Settling Owner's Affected Property. Continuing Obligations will be imposed in the ICIAP approval letter for the site and will require notification to affected parties in accordance with Wis. Admin. Code § NR 725.07 prior to imposition. SD will submit site information to the WDNR for posting on the WDNR Database in accordance with Wis. Admin. Code § NR

726.15. The Continuing Obligations will impose restrictions on the land, water, or other resource uses set forth in ¶ 20.b (Land, Water, or Other Resource Use Restrictions).

d. **Enforceability**. Per Wis. Stats. 292.12, the State is expressly authorized to impose and enforce the Continuing Obligations without acquiring an interest in real property.

e. **Initial Title Evidence**. SD shall, within 45 days after the Date of Notice of RD Completion:

(1) **Record Title Evidence**. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the SD, or "To Be Determined;" (ii) covers the Affected Property that is to be subject to Continuing Obligations (iii) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (iv) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence**. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

f. **Release or Subordination of Prior Liens, Claims, and Encumbrances**

(1) SD shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to SD, unless EPA waives this requirement as provided under ¶¶ 20.f(2)-(4).

(2) SD may, by the deadline under ¶ 20.e (Initial Title Evidence), submit an initial request for waiver of the requirements of ¶ 20.f(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Continuing Obligations and interfere with the remedy or result in unacceptable exposure to Waste Material.

(3) SD may, within 90 days after the Date of Notice of RD Completion, or if an initial waiver request has been filed, within 45 days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of ¶ 20.f(1) regarding any particular Prior Encumbrance on the grounds that SD could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) SD shall complete its obligations under ¶ 20.f(1) regarding all Prior Encumbrances within 180 days after the Date of Notice of RD Completion; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 100 days after EPA's determination on the final waiver request.

(6) SD shall submit to EPA for review and approval, by the deadline specified in ¶ 20.f(5), all draft instruments updating Prior Encumbrances, as necessary.

(7) Within 20 days of EPA approval of any draft instruments updating Prior Encumbrances, SD shall update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶20.e (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), SD shall secure the immediate recordation of instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, SD shall secure the release, subordination, modification, or relocation under ¶ 20.f(1), or the waiver under ¶ 20.f(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the instruments addressing Prior Encumbrances.

(8) If SD submitted a title insurance commitment under ¶ 20.e(1) (Initial Title Evidence), then upon the recording of the instruments addressing Prior Encumbrances, SD shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount approved by EPA; (iii) is issued to the United States, SD, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.

(9) SD shall, within 30 days after the recording of the instruments addressing Prior Encumbrances or such other deadline approved by EPA, provide to the United States and to all grantees of the instruments addressing Prior Encumbrances: (i) certified copies of the recorded instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording.

g. **Recording of Proprietary Controls**

(1) Proprietary Controls will be imposed as Continuing Obligations. The Institutional Control Implementation and Assurance Plan (ICIAP) approval

letter issued by WDNR will impose Continuing Obligations on the properties where restrictions to limit land, water or resource use are required and/or to require maintenance of a performance standard such as engineered barriers. Imposition of the Continuing Obligations includes posting of the approval letter in the WDNR Database.

(2) At least 30 days prior to submitting the final ICIAP to EPA and DNR as part of the Remedial Action Work Plan, the SD will provide notice to the Non-Settling Owners of Affected Property in accordance with Wis. Admin. Code §NR 725.05 of the intent to impose Continuing Obligations on their property. Confirmation of notification provided to the Non-Settling Owners of Affected Property must be included with the submitted ICIAP.

(3) Upon EPA and State approval of the proposed ICIAP, the State will impose Continuing Obligations through approval of the ICIAP and will post the approval letter documenting the Continuing Obligations in the WDNR Database in accordance with Wis. Admin. Code § NR 726.15.

(4) The State will mail written notice of the approval of the ICIAP, including imposition of the Continuing Obligations, to the SD and the Non-Settling Owners of Affected Property, confirming that the Continuing Obligations are in place.

(5) As part of certifying the Completion of Work under Section 3.8 of the SOW, EPA and WDNR may update or impose new restrictions, limitations, or other conditions on the property, and WDNR shall impose the required Institutional Controls in the form of Continuing Obligations. The SD will provide notification to the affected Non-Settling Owners of Affected Property in accordance with Wis. Admin. Code § NR 725.05 and the WDNR will update the Continuing Obligations in the WDNR Database in accordance with Wis. Admin. Code § NR 726.15.

(6) Should EPA and WDNR determine that the Continuing Obligations require modification, or SD takes an action that requires modifications to Continuing Obligations, SD shall follow Wis. Admin. Code § NR 727.07 to notify the agencies of the modification and Wis. Admin. Code § NR 727.09 to provide the information necessary for the State to impose the modified Continuing Obligations and update the WDNR Database.

(7) SD shall monitor and annually report on all Continuing Obligations required under this CD.

21. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SD would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SD is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the United

States, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

22. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed (other than the WDNR postings on the WDNR Database described herein), SD shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls.

23. **Notice to Successors-in-Title**

a. If SD has acquired any of the Affected Property, then SD shall, within 15 days after the Effective Date, submit for EPA approval, after consultation with WDNR, a notice to be filed regarding SD's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that potentially responsible parties have entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD was entered by the Court. The notice shall also state that information relating to Institutional Controls impacting the property is maintained on the WDNR Database and include the internet address for the WDNR Database. SD shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. SD shall, prior to entering into a contract to Transfer SD's Affected Property, or 60 days prior to Transferring Owner SD's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a CD requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the notice that it provided to the proposed transferee.

24. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SD shall continue to comply with its obligations under the CD, including its obligation to secure access and ensure compliance with any land, water, or other

resource use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

25. Notwithstanding any provision of the CD, Plaintiffs retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

26. In order to ensure completion of the Work, SD shall secure financial assurance, initially in the amount of $7,600,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies. At least 10% of the financial assurance needs to be in the form listed in 26.a, b, c, or d.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by SD that it meets the relevant test criteria of ¶ 28, accompanied by a standby funding commitment, which obligates the affected SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration, in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of SD or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with SD; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 28.

27. SD shall, within 30 days of the Effective Date, obtain EPA's approval of the form of SD's financial assurance. Within 30 days of such approval, SD shall secure all executed and/or

otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA Regional Financial Management Officer, to the United States, and to EPA and the State as specified in Section XX (Notices and Submissions).

28. SD seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the SD or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The SD or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of

other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the SD or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

29. SD providing financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f must also:

a. Annually resubmit the documents described in ¶ 28.b within 90 days after the close of the affected SD's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected SD or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the SD or guarantor in addition to those specified in ¶ 28.b; EPA may make such a request at any time based on a belief that the SD or guarantor may no longer meet the financial test requirements of this Section.

30. SD shall diligently monitor the adequacy of the financial assurance. If SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, SD shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 32 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

31. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 70.b, then, in accordance with any applicable financial assurance mechanism, EPA is

entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 31.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 31.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 70.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 26.e or 26.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 31 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the WPSC Marinette MGP Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 31 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

32. **Modification of Amount, Form, or Terms of Financial Assurance**. SD may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 27, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SD of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SD may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SD may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested

modifications pursuant to this Paragraph, SD shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 27.

33. **Release, Cancellation, or Discontinuation of Financial Assurance**. SD may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 3.8 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

34. **Payment by SD for United States Past Response Costs**.

a. Within 60 days after the Effective Date, SD shall pay to EPA $11,400.07 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 36.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment**. The total amount to be paid by SD pursuant to ¶ 34.a shall be deposited by EPA in the WPSC Marinette MGP Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. **Payments by SD for Future Response Costs**. SD shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills**. On a periodic basis, EPA will send SD a bill requiring payment that includes an itemized cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as otherwise provided in ¶ 37, in accordance with ¶ 36.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by SD pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the WPSC Marinette MGP Special Account Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the WPSC Marinette MGP Special Account Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

c. **Payments by SD to State**. SD shall pay to the State all State Future Response Costs not inconsistent with the NCP. The State will send SD a bill requiring payment that includes an Expenditure Analysis Report on a periodic basis. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as

otherwise provided in ¶ 37 (Contesting Future Response Costs). SD shall make all payments to the State required by this Paragraph in accordance with instructions to be provided by the State.

36. **Payment Instructions for SD**

a. **Past Response Costs Payments**

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Western District of Wisconsin shall provide SD, in accordance with ¶ 93, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 36.a, SD shall make such payment**:** by Fedwire Electronic Funds Transfer (EFT) / at https://www.pay.gov] to the U.S. DOJ account, in accordance with the instructions provided under ¶ 36.a(1), and including references to the CDCS Number, Site/Spill ID Number B5BT, and DJ Number 90-11-3-11991.

(3) For each payment made under this ¶ 36.a, SD shall send notices, including references to the CDCS, Site/Spill ID, and DOJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93.

b. **Future Response Costs Payments and Stipulated Penalties**

(1) For all payments subject to this ¶ 36.b, SD shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DOJ numbers. The Fedwire EFT payment must be sent as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

(2) For all payments made under this ¶ 36.b, SD must include references to the Site/Spill ID and DOJ numbers. At the time of any payment required to be made in accordance with ¶ 36.b, SD shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93. All notices must include references to the Site/Spill ID and DOJ numbers.

37. **Contesting Future Response Costs**. SD may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs or any State Future Response Costs billed under ¶ 35 (Payments by SD for Future Response Costs) if it determines that EPA or the State has made a mathematical error or included a cost item that is not

within the definition of Future Response Costs or State Future Response Costs, or if it believes EPA or the State incurred excess costs as a direct result of an EPA or State action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs or State Future Response Costs and the basis for objection. If SD submits a Notice of Dispute, SD shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States and all uncontested State Future Response Costs to the State, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or State Future Response Costs. SD shall send to the United States or the State, as appropriate, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States or the State prevails in the dispute, SD shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, within 7 days after the resolution of the dispute. If SD prevails concerning any aspect of the contested costs, SD shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States or the State, if State costs are disputed, within 7 days after the resolution of the dispute. SD shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶¶ 36.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SD's obligation to reimburse the United States and the State for their Future Response Costs.

38. **Interest**. In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SD shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SD's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of SD's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

XI. INDEMNIFICATION AND INSURANCE

39. **SD's Indemnification of the United States and the State**

a. The United States and the State do not assume any liability by entering into this CD or by virtue of any designation of SD as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD shall indemnify, save, and hold harmless the United States and the State and their officials, agents, employees, contractors,

subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SD, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD's behalf or under its control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States and the State based on negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this CD. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of SD in carrying out activities pursuant to this CD. Neither SD nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State, respectively, shall give SD notice of any claim for which the United States or the State plans to seek indemnification pursuant to this ¶ 39, and shall consult with SD prior to settling such claim.

40. SD covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State, respectively, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between SD and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, SD shall indemnify, save and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of SD and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

41. **Insurance**. No later than 15 days before commencing any on-site Work, SD shall secure, and shall maintain, or shall require its contractor(s) to secure and maintain, until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to ¶ 3.6 (Certification of RA Completion) of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of SD pursuant to this CD. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the date of the initial submission of those documents. If SD demonstrates by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or

subcontractor, SD need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SD shall ensure that all submittals to EPA under this Paragraph identify the WPSC Marinette, MGP Site, Marinette, Wisconsin and the civil action number of this case.

XII. FORCE MAJEURE

42. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD's contractors that delays or prevents the performance of any obligation under this CD despite SD's best efforts to fulfill the obligation. The requirement that SD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

43. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SD intends or may intend to assert a claim of force majeure, SD shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 24 hours of when SD first knew that the event might cause a delay. Within five days thereafter, SD shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SD's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SD shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SD from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 42 and whether SD has exercised its best efforts under ¶ 42, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

44. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CD that are affected by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify SD in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State,

agrees that the delay is attributable to a force majeure, EPA will notify SD in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

45. If SD elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, it shall do so no later than 20 days after receipt of EPA's notice. In any such proceeding, SD shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that SD complied with the requirements of ¶¶ 42 and 43. If SD carries this burden, the delay at issue shall be deemed not to be a violation by SD of the affected obligation of this CD identified to EPA and the Court.

46. The failure by EPA to timely complete any obligation under the CD or under the SOW is not a violation of the CD, provided, however, that if such failure prevents SD from meeting one or more deadlines in the SOW, SD may seek relief under this Section.

XIII. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SD that have not been disputed in accordance with this Section.

48. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

49. **Statements of Position**

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, SD invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SD. The Statement of Position shall specify SD's position as to whether formal dispute resolution should proceed under ¶ 50 (Record Review) or 51.

b. Within ten days after receipt of SD's Statement of Position, EPA will serve on SD its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 50 (Record Review) or 51. Within seven days after receipt of EPA's Statement of Position, SD may submit a Reply.

c. If there is disagreement between EPA and SD as to whether dispute resolution should proceed under ¶ 50 (Record Review) or 51, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SD ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 50 and 51.

50. **Record Review**. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SD regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 50.a. This decision shall be binding upon SD, subject only to the right to seek judicial review pursuant to ¶¶ 50.c and 50.d.

c. Any administrative decision made by EPA pursuant to ¶ 50.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SD with the Court and served on all Parties within 14 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SD's motion.

d. In proceedings on any dispute governed by this Paragraph, SD shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 50.a.

51. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 49. The Superfund Division Director's decision shall be binding on SD unless, within 14 days after receipt of the decision, SD files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the

efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SD's motion.

b. Notwithstanding ¶ L (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

52. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SD under this CD, except as provided in ¶ 37 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 60. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

53. SD shall be liable to the United States and the State on an equal percentage basis for stipulated penalties in the amounts set forth in ¶¶ 54.a and 55 for failure to comply with the obligations specified in ¶¶ 54.b and 55, unless excused under Section XII (Force Majeure). "Comply" as used in the previous sentence includes compliance by SD with all applicable requirements of this CD, within the deadlines established under this CD. If (i) an initially submitted or resubmitted deliverable contain a material defect and the conditions are met for modifying the deliverable under ¶ 5.6(a)(2) of the SOW; or (ii) a resubmitted deliverable contains a material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

54. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 54.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$500
15th through 30th day	$1,000
31st day and beyond	$5000

b. **Obligations**

(1) Payment of any amount due under Section X(Payments for Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).

(4) Failure to implement activities required by the Remedial Design Work Plan;

(5) Failure to implement activities required by the Remedial Action Work Plan; and

(6) Failure to meet any compliance date set forth in the RD or RA SOW.

55. **Stipulated Penalty Amounts – Other Deliverables**. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD other than those specified in Paragraph 54.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$300
15th through 30th day	$600
31st day and beyond	$2,000

56. In the event that, after consultation with the State, EPA assumes performance of a portion or all of the Work pursuant to ¶ 70 (Work Takeover), SD shall be liable for a stipulated penalty in the amount of $100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 31 (Access to Financial Assurance) and 70 (Work Takeover).

57. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 5.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SD of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under ¶ 50.b or 51.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

58. Following EPA's determination that SD has failed to comply with a requirement of this CD, EPA may give SD written notification of the same and describe the noncompliance. EPA and the State may send SD a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

59. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days after SD's receipt from EPA of a demand for payment of the penalties, unless SD invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States and the State under this Section shall

indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 36.b (instructions for Future Response Cost Payments and Stipulated Penalties).

60. Penalties shall continue to accrue as provided in ¶ 57 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA and the State within 30 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SD shall pay all accrued penalties determined by the Court to be owed to EPA and the State within 60 days after receipt of the Court's decision or order, except as provided in ¶ 60.c;

c. If the District Court's decision is appealed by any Party, SD shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to SD to the extent that they prevail.

61. If SD fails to pay stipulated penalties when due, SD shall pay Interest on the unpaid stipulated penalties as follows: (a) if SD has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 60 until the date of payment; and (b) if SD fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 59 until the date of payment. If SD fails to pay stipulated penalties and Interest when due, the United States and the State may institute proceedings to collect the penalties and Interest.

62. The payment of penalties and Interest, if any, shall not alter in any way SD's obligation to complete the performance of the Work required under this CD.

63. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of SD's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

64. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, and after reasonable opportunity for review and comment by the State, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFFS

65. **Covenants for SD by United States.** Except as provided in ¶¶ 66, 67 (United States' Pre- and Post-Certification Reservations), and 69 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of RA Completion by EPA pursuant to ¶ 3.6 (Certification of RA Completion) of the SOW. These covenants are conditioned upon the satisfactory performance by SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

66. **United States' Pre-Certification Reservations**. Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

67. **United States' Post-Certification Reservations**. Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of RA Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the RA is not protective of human health or the environment.

68. For purposes of ¶ 66 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed, and as set forth in the ROD for the Site and the administrative record supporting the ROD. For purposes of ¶ 67 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

69. **General Reservations of Rights**. The United States reserves, and this CD is without prejudice to, all rights against SD with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SD with respect to:

a. liability for failure by SD to meet a requirement of this CD;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based on the ownership of the Site by SD when such ownership commences after signature of this CD by SD;

d. liability based on the operation of the Site by SD when such operation commences after signature of this CD by SD and does not arise solely from SD's performance of the Work;

e. liability based on SD's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in this CD, the AOC, the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. criminal liability;

h. liability for violations of federal or state law that occur during or after implementation of the Work; and

i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables).

70. **Work Takeover**

a. In the event EPA determines that SD: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SD. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SD a period of 14 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 14-day notice period specified in ¶ 70.a, SD has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SD in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 70.b. Funding of Work Takeover costs is addressed under ¶ 31 (Access to Financial Assurance).

c. SD may invoke the procedures set forth in ¶ 50 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 70.b. However, notwithstanding

SD's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 70.b until the earlier of (1) the date that SD remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 50 (Record Review) requiring EPA to terminate such Work Takeover.

71. Notwithstanding any other provision of this CD, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

72. Covenants for Settling Defendant by State. In consideration of the actions that will be performed and the payments that will be made by SD under this Consent Decree, and except as specifically provided in Paragraphs 66, 67 (Pre- and Post-Certification Reservations), and 69 (General Reservations of Rights), the State covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA or Wisconsin statutory or common law relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Section 3.6 of the SOW (Certification of RA Completion). These covenants are conditioned upon the satisfactory performance by SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

XVI. COVENANTS BY SD

73. **Covenants by SD**. Subject to the reservations in ¶ 75, SD covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Site, Past Response Costs, Future Response Costs, State Past Response Costs, State Future Response Costs, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site, Past Response Costs, Future Response Costs, State Past Response Costs, State Future Response Costs, and this CD; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

74. Except as provided in ¶¶ 77 (Waiver of Claims by SD) and 84 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiffs), other than in ¶¶ 69.a (claims for failure to meet a requirement of the CD), 69.g (criminal liability), and 69.h (violations of federal/state law during or after implementation of the Work), but

only to the extent that SD's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

75. SD reserves, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SD' deliverables or activities.

76. Nothing in this CD shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

77. **Waiver of Claims by SD**

a. SD agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have, as follows:

(1) **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to SD with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) ***De Minimis* Ability to Pay Waiver**. For response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement , or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. **Exceptions to Waivers**

(1) The waivers under this ¶ 77 shall not apply with respect to any defense, claim, or cause of action that SD may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against SD.

(2) The waiver under ¶ 77.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could

contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

78. SD agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

79. Except as provided in ¶ 77 (Waiver of Claims by SD), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SD), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD. The "matters addressed" in this CD are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States exercises rights under the reservations in Section XV (Covenants by Plaintiffs), other than in ¶¶ 69.a (claims for failure to meet a requirement of the CD), 69.g (criminal liability), or 69.h (violations of federal/state law during or after implementation of the Work), the "matters addressed" in this CD will no longer include those response costs or response actions that are within the scope of the exercised reservation.

81. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

83. SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States and the State within 10 days after service of the complaint on SD. In addition, SD shall notify the United States and the State within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

84. **Res Judicata and Other Defenses**. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, SD shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiffs).

XVIII. ACCESS TO INFORMATION

85. SD shall provide to EPA and the State, upon request and subject to ¶¶ 86 and 87, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SD's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SD shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

86. **Privileged and Protected Claims**

a. SD may assert that all or part of a Record requested by Plaintiffs is privileged or protected as provided under federal law, in lieu of providing the Record, provided SD complies with ¶ 86.b, and except as provided in ¶ 86.c.

b. If SD asserts a claim of privilege or protection, it shall provide Plaintiffs with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, SD shall provide the Record to Plaintiffs in redacted form to mask the privileged or protected portion only. SD shall retain all Records that it claims to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SD's favor.

c. SD may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that SD is required to create or generate pursuant to this CD.

87. **Business Confidential Claims**. SD may assert that all or part of a Record provided to Plaintiffs under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SD shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SD asserts business confidentiality claims. Records that SD claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified SD that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SD.

88. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

89. Notwithstanding any provision of this CD, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

90. Until 10 years after EPA's Certification of Work Completion under ¶ 3.8 (Certification of Work Completion) of the SOW, SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that SD who is potentially liable as owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SD (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

91. At the conclusion of this record retention period, SD shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 86 (Privileged and Protected Claims), SD shall deliver any such Records to EPA or the State.

92. SD certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

93. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-11991

As to EPA:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Mail Code: S-6J
Chicago, IL 60604

and:

Margaret Gielniewski
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Mail Code: SR-6J
Chicago, IL 60604-3507
Gielniewski.margaret@epa.gov

At to EPA Cincinnati Finance Center:

EPA Cincinnati Finance Center
26 West Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State:

Kevin McKnight
State Project Coordinator
Wisconsin Department of Natural Resources
625 East County Road Y
Suite 700
Oshkosh, WI 54901
Kevin.mcknight@wisconsin.gov

and:

William J. Nelson
Bureau of Legal Services
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703
William.nelson@wisconsin.gov

As to SD:

Frank Dombrowski
Settling Defendant's Project Coordinator
WEC Energy Group Business Services
333 West Everett Street - A231
Milwaukee, WI 53203
frank.dombrowski@we-energies.com

XXI. RETENTION OF JURISDICTION

94. This Court retains jurisdiction over both the subject matter of this CD and SD for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

95. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the AOC.

"Appendix B" is the ROD.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the SOW

XXIII. MODIFICATION

96. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SD. All modifications to the CD, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

97. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SD consents to the entry of this CD without further notice.

99. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

100. The undersigned representative of SD for this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Assistant Attorney General for the State certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

101. SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SD in writing that it no longer supports entry of the CD.

102. SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SD agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SD need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVI. FINAL JUDGMENT

103. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

104. Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States, the State, and SD. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

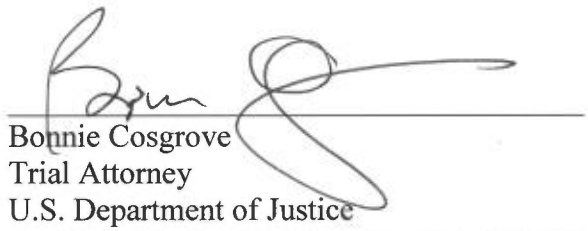
SO ORDERED this 18th day of September, 2020.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

FOR THE UNITED STATES OF AMERICA:

KAREN DWORKIN
Deputy Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

4/21/20
Dated



Bonnie Cosgrove
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
301 Howard St., Ste. 1050
San Francisco, CA 94105
(415) 744-0130
bonnie.cosgrove@usdoj.gov

Signature Page for CD regarding the WPSC Marinette MGP Superfund Alternative Site

J. 9 Fo for

Douglas Ballotti
Director
Superfund & Emergency Management Division
Region 5
U.S. Environmental Protection Agency
Mail code S-6J
77 West Jackson Blvd
Chicago, Illinois 60604

FOR THE STATE OF WISCONSIN:

Date: 6/17/19

Preston D. Cole
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Date: _____

Lorraine Stoltzfus
Assistant Attorney General
Wisconsin Department of Justice
123 W. Washington Avenue
Madison, WI 53702

Signature Page for CD regarding the WPSC Marinette MGP Superfund Alternative Site

FOR THE STATE OF WISCONSIN:

Date: _____

Preston Cole
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Date: April 24, 2020

Joshua L. Kaul
Wisconsin Attorney General
Lorraine C. Stoltzfus
Assistant Attorney General
17 West Main Street
Madison, Wisconsin 53703

Signature Page for CD regarding the WPSC Marinette MGP Superfund Alternative Site

4-24-19
Dated

On behalf of Wisconsin Public Service Corporation

Elizabeth Stueck-Mullane
Vice President- Environmental
WEC Energy Group – Business Services
333 W. Everett St.
Milwaukee, WI 53203

Agent Authorized to Accept Service on Behalf of Above-signed Party:	Name (print):	Wisconsin Public Service Corporation
	Title:	N/A
	Company:	c/o Corporate Creations Network Inc.
	Address:	4650 W. Spencer Street Appleton, WI 54914
	Phone:	(920) 968-7701
	email:	contactus@corpcreations.com

WISCONSIN PUBLIC SERVICE CORPORATION
MARINETTE MANUFACTURED GAS PLANT
SUPERFUND ALTERNATIVE SITE

APPENDIX A

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

WPSC Marinette MGP Site
Marinette, Wisconsin

Wisconsin Public Service Corporation

Respondent

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN

EPA Region 5
CERCLA Docket No. V-W-18-C-009

Proceeding under Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9604, 9606, 9607 and 9622

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Wisconsin Public Service Corporation ("WPSC" or "Respondent"). This Settlement Agreement provides that Respondent shall undertake a Remedial Design ("RD"), including various procedures and technical analyses, to produce a detailed set of plans and specifications for implementation of the Remedial Action selected in EPA's September 27, 2017 Interim Record of Decision ("ROD") for the WPSC Marinette MGP Site ("Site"). The Site is located in the City of Marinette, Marinette County, Wisconsin, encompassing approximately 15 acres (Appendix B, Figure 1). The Site includes the location of the Respondent's former manufactured gas plant ("MGP") facility, which covered approximately four (4) acres. In addition, Respondent shall reimburse the United States for certain response costs that it incurs, as provided herein.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606, 9607 and 9622 ("CERCLA"). This authority was delegated to the EPA Administrator by Executive Order 12580 (52 Fed. Reg. 2923, Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation No. 14-14-C. This authority was further delegated by the Regional Administrator, EPA, Region 5 to the Director, Superfund Division, EPA, Region 5 by Regional Delegation No. 14-14-C on May 2, 1996.

3. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by the Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that they will not contest the basis or validity of this Settlement Agreement or its terms.

4. The objectives of EPA and Respondent in entering into this Settlement Agreement are to protect public health or welfare or the environment at the Site by the design of response actions at the Site by Respondent, to reimburse response costs of EPA, and to resolve the claims of EPA against Respondent as provided in this Settlement Agreement.

5. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan,40 C.F.R. Part 300, *et seq.*, as amended ("NCP"), and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Wisconsin Department of Natural Resources ("WDNR"), on October 2, 2017 of negotiations with potentially responsible parties regarding the implementation of the remedial design for the Site, and EPA has provided them with an opportunity to participate in such negotiations and be a party to this Settlement Agreement.

6. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration ("NOAA") and the U.S. Department of the Interior ("DOI") on October 2, 2017 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement Agreement.

II. PARTIES BOUND

7. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement. The signatories to this Settlement Agreement certify that they are authorized to execute and legally bind the parties they represent.

8. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement within 14 days after the Effective Date of this Settlement Agreement or after the date of such retention. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement, in the documents attached to this Settlement Agreement, or incorporated by reference in to this Settlement Agreement, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVIII (Effective Date and Subsequent Modification).

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, technical memoranda and other deliverables pursuant to this Settlement Agreement, conducting

community relations, providing technical assistance grants to community groups (if any), verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs), travel costs, laboratory costs, the costs incurred pursuant to Paragraph 55 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 90 (Work Takeover). Future Response Costs shall also include all Interim Costs.

f. "Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and restrictive covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with CERCLA §107(a), 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between completion of the RI/FS and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

i. "MGP" shall mean manufactured gas plant.

j. "NCP" or "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, *et seq.,* and any amendments thereto.

k. "Settlement Agreement" or "Consent Order" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of a conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondent.

n. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section H of the ROD and Section 1 of the SOW.

o. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, and all attachments thereto that the Regional Administrator, EPA Region 5, or his/her delegate, signed on September 27, 2017.

p. "Remedial Design" or "RD" shall mean those activities that Respondent shall undertake to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

q. "Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 32 of this Settlement Agreement and approved by EPA, and any amendments thereto.

r. "Respondent" or "WPSC" shall mean Wisconsin Public Service Corporation.

s. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral and includes one or more paragraphs.

t. "Site" shall mean the Marinette MGP Site, encompassing approximately 15 acres, located at 1603 Ely Street, Marinette, Wisconsin as described in the ROD.

u. "State" shall mean the State of Wisconsin.

v. "Statement of Work" or "SOW" shall mean the Statement of Work for implementation of the Remedial Design, and any modifications made thereto in accordance with this Settlement Agreement, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

w. "TAP" shall mean technical assistance plan.

x. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under Wis. Stats. §§ 292.01(5), 299.01(6) or Wis. Admin. Code § NR 700.03(25).

y. "WDNR" shall mean the Wisconsin Department of Natural Resources.

z. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

IV. FINDINGS OF FACT

10. MGPs operated to provide gas from coal or oil. MGPs were constructed with similar facilities and generated similar wastes using defined manufacturing processes. The gas manufacturing and purification processes produced by-products and residues that include tars, sludges, lampblack, light oils, spent oxide wastes, petroleum hydrocarbons, benzene, cyanide, metals and phenols. Residues often occur at the same locations at former MGP sites (e.g., near the former gas holders, tar stumps, and lampblack separators). The wastes contain a number of known and suspected carcinogens and other potentially hazardous chemicals.

11. The 4-acre former Marinette MGP property is currently owned by the City of Marinette (City) and 1428 Main Street Holdings. The 1428 Main Street Holdings property was previously owned by Goodwill Industries and may also be referred to as the "former Goodwill property" in this and other site-related documents. Currently, the City operates a WWTP (WWTP) at the property. The portion of the former MGP facility located on the 1428 Main Street Holdings property is currently a parking lot for the commercial building located on the property. The former MGP property is within 700 feet of the Menominee River. The former MGP property is bounded on the north by Mann Street and railroad tracks, on the southwest by Ludington Street, and on the southeast by Ely Street. The approximate area of the upland portion of the Site is approximately 15 acres and includes the following properties owned by WPSC, Canadian National Railroad, Marinette Central Broadcasting, and the City, which owns Boom Landing, the WWTP, the Fire Station, and City rights-of-way. The upland site is primarily located within heavy manufacturing and park districts; however, small portions of the site also fall within community business and waterfront overlay districts. Most of the upland site is covered with pavement, buildings, or manicured lawns. The City has constructed a public boat launch (Boom Landing) along the Menominee River adjacent to the former MGP property where a former slough/logrun had passed through the property. The boat landing is located approximately 2 miles from the mouth into Lake Michigan. The Menominee River, which separates Wisconsin from Michigan's Upper Peninsula, is a gaining stream that receives groundwater and surface water from the Marinette area and discharges into Lake Michigan (Green Bay). According to the bathymetric surveys, water depths near the site range from 1 to 20 feet. The river is nearly 1,075 feet wide near the site.

12. The former Marinette MGP facility was constructed between 1901 and 1910 and operated through 1960. Prior to 1903, the Marinette Lighting Company owned the former MGP property. In 1903, electric and gas utilities in Marinette, Wisconsin, and Menominee, Michigan, were merged to form the Menominee and Marinette Light and Traction Company. In 1922, WPSC acquired control of the Menominee and Marinette Light and Traction Company and operated it as a wholly owned subsidiary. In 1953, the subsidiary was merged with the parent company. In 1962, the former MGP property was sold to the City of Marinette under a land contract. The City subsequently used the property to expand the WWTP facilities.

13. The former MGP facility operated with two methods of coal gas production. Coal gas production from construction of the facility to 1928 was by retort, while coal gas production from 1928 to 1960 used the carbureted water gas (CWG) process. Coal tar was a valuable commodity and typically sold as a chemical feedstock and for wood treatment. The WPSC Marinette MGP site generated various byproducts and wastes, such as coal tar, wastewater sludge, and nonaqueous phase liquid (NAPL). NAPLs are composed of liquids that do not readily mix with water, such as gasoline or tarry products, although the compounds may also partially dissolve in water. These materials contain polynuclear aromatic hydrocarbons (PAHs) such as naphthalene and benzo(a)pyrene; petroleum hydrocarbons such as benzene, toluene, ethylbenzene, and xylene (BTEX); metals such as arsenic and lead; cyanide; and phenolic compounds. Varying levels of these contaminants have been found in the site soil, groundwater, soil vapor, and adjacent sediment samples.

14. A number of investigations have been performed at the Site over the years. A summary of sampling events includes the following:

- 1989 and 1991: The City of Marinette encountered MGP-affected soils during the 1989 WWTP expansion, which lead the City to contact Wisconsin DNR regarding its findings and soil investigation. Approximately 9,700 tons of affected soil, identified through visual and olfactory evidence only, were excavated and disposed of by the City at a licensed landfill.
- 1992: A more complete site investigation conducted by Robert E. Lee & Associates, Inc.
- 1994: NRT performed soil and groundwater sampling to determine lateral and vertical extent of contamination in those media.
- 1996: NRT conducted a Phase II investigation, including more soil borings and additional monitoring well installation.
- 2002: NRT conducted groundwater sampling and assessment of the municipal water source.
- 2004: NRT sampled soil and installed monitoring wells in the proposed boat-launch expansion area and along the former slough.
- 2011: Ambient sediment sampling that included poling, surface water sampling, and river bathymetry in preparation for the NTCRA.
- 2012: Implement remaining sediment sampling prior to removal action.
- 2012: Conduct upland RI fieldwork, including soil borings, installation of monitoring wells, and installation and sampling of soil gas probes.
- 2013-2015: NRT resumed semiannual groundwater monitoring efforts.
- 2012-2014: Seasonal soil vapor sampling.
- 2014: Supplemental upland RI fieldwork.
- April 2013-2015: Monitoring of the residual sand cover placed on sediment during the NTCRA.

In addition to the 1989 soil removal, in June 2004, the City began another sewer expansion project requiring additional excavation of soils on the former MGP property. Approximately 1,030 tons of MGP-affected soil were excavated and disposed of at an appropriate landfill.

15. From October 2012 through March 2013, WPSC conducted a non-time critical removal and removed approximately 14,799 cubic yards of MGP-impacted sediments down to 22.8 milligrams per kilogram (mg/kg) (ppm) Total (13) PAHs. An additional 422 cubic yards were removed for navigational purposes as part of an access agreement between WPSC and the Nestegg Marine, an adjacent property. The objective was to mechanically excavate contaminated sediments in areas with total PAH concentrations and NAPL until post-dredge verification samples indicated that the remaining sediments contained Total (13) PAH concentrations less

than the remedial action level (RAL) of 22.8 ppm and no visual NAPL remaining. Despite multiple attempts by the contractor, there were a few areas where sediment on the uneven bedrock surface could not be fully removed. Consequently, a total of approximately 12,250 square feet of sand (residual sand cover) with a minimum thickness of 10 inches was placed in areas where post-dredge verification samples showed residual Total (13) PAH concentrations greater than 22.8 mg/kg. Monitoring of the residual sand cover is discussed in the following paragraphs with other sediment sample collection and results.

16. In May 2006, EPA and WPSC entered into an Administrative Settlement Agreement and Order on Consent (AOC) that required WPSC to conduct a Remedial Investigation/Feasibility Study (RI/FS) at six former MGP sites in Wisconsin (Docket No. V-W-06-C-847). WPSC completed the Marinette MGP Site RI report on January 22, 2014, and completed the FS report on July 24, 2017.

17. On September 29, 2017, EPA issued a ROD to address the Site. The ROD calls for the excavation and offsite disposal of accessible source material located within the Boom Landing Zone and Waste Water Treatment Plant Zone, installation of horizontal engineered barriers over surficial soil exceeding preliminary remediation goals, in situ treatment of affected groundwater, effectiveness monitoring of the existing reactive core mat, and implementation of institutional controls to manage remaining potential soil, groundwater, soil gas, and sediment risks.

18. The Site has not been proposed to the National Priorities List.

19. The Respondent is WPSC, owner of a portion of the Site and the owner and operator at the time of disposal of hazardous substances.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this Settlement Agreement, EPA has determined that:

20. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23. The Respondent is a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607.

a. Respondent is the "owner" and/or "operator" of all or part of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

b. Respondent was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

24. The conditions described in Paragraphs 11 to 17 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

VI. SETTLEMENT AGREEMENT AND ORDER

25. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that the Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF PROJECT MANAGERS AND COORDINATORS

26. Respondent shall retain one or more contractor(s) to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least thirty (30) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within thirty (30) days of EPA's disapproval. With respect to any contractor proposed to be Supervising Contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the EPA Project Coordinator and Regional Quality Assurance personnel to the Site file.

27. Within fifteen (15) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project

Coordinator shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent. Respondent has designated Frank Dombrowski of WEC Energy Group - Business Services, 333 W. Everett St. - A231, Milwaukee, WI 53202 as its Project Coordinator.

28. EPA has designated Margaret Gielniewski of the Superfund Division, Region 5 as its Project Coordinator. EPA will notify Respondent of a change in its designation of the Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the Project Coordinator at 77 West Jackson, SR-6J, Chicago, Illinois 60604-3590

29. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the areas under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

30. EPA and Respondent shall have the right, subject to Paragraph 27, to change their respective designated Project Coordinator. Respondent shall notify EPA fifteen (15) days before such a change is made. The initial notification by either party may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

31. Respondent shall perform all action necessary to implement the Statement of Work.

32. Work Plan and Implementation.

a. Within thirty (30) days after the Effective Date, Respondent shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Settlement Agreement, and/or the SOW. Upon its approval by EPA pursuant to Section IX (EPA Approval of Plans and Other Submissions), the Remedial Design Work Plan shall be incorporated into and become enforceable under this Settlement Agreement.

b. The RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan ("RD

QAPP") in accordance with Paragraph 39 (Quality Assurance and Sampling); and (2) a Construction Quality Assurance Plan; (3) a Pre-design Work Plan; (4) preliminary design submittal; (5) a Health and Safety Plan; and (6) a pre-final/final design submittal. In addition, the RD Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the RD Work Plan by EPA pursuant to Section IX (EPA Approval of Plans and Other Submissions), after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Respondent shall implement the RD Work Plan. Respondent shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved RD Work Plan in accordance with the approved schedule for review. Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies, if conducted; (3) results of additional field sampling and pre-design work, if conducted; (4) project delivery strategy; (5) preliminary plans, drawings, and sketches; (6) required specifications in outline form; and (7) a preliminary construction schedule.

e. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Project Coordinator, to conduct a quality assurance program during the construction phase of the project.

33. Health and Safety Plan. In accordance with the schedule set forth in the SOW, Respondent shall prepare and submit to EPA for review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the remedial action.

34. Respondent shall conduct all work in accordance with the SOW, the ROD, CERCLA, the NCP, and all applicable EPA guidance. The Project Coordinator shall use his or her best efforts to inform Respondent if new or revised guidances may apply to the Work.

35. Respondent shall perform the tasks and submit the deliverables that the SOW sets forth. EPA will approve, approve with conditions, modify, or disapprove, or use any combination

of these options, for each deliverable that Respondent submits under this Settlement Agreement and the SOW, pursuant to Section IX (EPA Approval of Plans and Other Submissions). Each deliverable must include all listed items as well as items that the RD Work Plan indicates Respondent shall prepare and submit to EPA for review and approval.

36. Upon EPA's approval, this Settlement Agreement incorporates any reports, plans, specifications, schedules, and attachments that this Settlement Agreement or the SOW requires. With the exception of extensions that EPA allows in writing or certain provisions within Section XVII of this Settlement Agreement (*Force Majeure*), any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Settlement Agreement and will subject Respondent to stipulated penalties in accordance with Section XVIII of this Settlement Agreement (Stipulated Penalties).

37. If any unanticipated or changed circumstances exist at the Site that may significantly affect the Work or schedule, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of such circumstances. Such notification is in addition to any notification required by Section XVII (*Force Majeure*).

38. If EPA determines that additional tasks, including, but not limited to, additional investigatory work or engineering evaluation, are necessary to complete the Work, EPA shall notify Respondent in writing. Respondent shall submit a workplan to EPA for the completion of such additional tasks within thirty (30) days of receipt of such notice, or such longer time as EPA agrees. The workplan shall be completed in accordance with the same standards, specifications, and requirements of other deliverables pursuant to this Settlement Agreement. EPA will review and comment on, as well as approve, approve with conditions, modify, or disapprove the workplan pursuant to Section IX (EPA Approval of Plans and Other Submissions). Upon approval or approval with modifications of the workplan, Respondent shall implement the additional work in accordance with the schedule of the approved workplan. Failure to comply with this Subsection, including, but not limited to, failure to submit a satisfactory workplan, shall subject Respondent to stipulated penalties as set forth in Section XVIII (Stipulated Penalties).

39. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the approved QAPP, the approved RD Work Plan and guidance identified therein. Respondent shall follow, as appropriate, EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5; EPA/240/B-01/003, March 1, 2001), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA.

b. Upon request by EPA, Respondent shall have a laboratory that meets the requirements described in Subparagraph 39(a) of this Settlement Agreement analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

d. Respondent shall summarize and submit to EPA the results of all sampling and/or tests or other analytical data that they generated, or was/were generated on its behalf, with respect to implementing this Settlement Agreement in the monthly progress reports that the SOW requires. Respondent shall maintain custody of all information and data that the Final Remedial Design Report and any deliverable relied upon or referenced. Upon EPA's request, Respondent shall provide such information and data to EPA.

e. Respondent shall report all communications that it has with local, state, or other federal authorities related to the Remedial Design Work in the monthly progress reports.

f. If, at any time during the Remedial Design process, Respondent becomes aware of the need for additional data beyond the scope of the approved Work Plans, Respondent shall have an affirmative obligation to submit to EPA's Project Coordinator, within twenty (20) days, a memorandum documenting the need for additional data.

40. Community Involvement Plan and Technical Assistance Plan.

a. EPA will prepare a Community Involvement Plan(s), in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at, or concerning, the Site

b. Within thirty (30) days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan ("TAP") for providing and administering up to $50,000 of Respondent's funds to be used by a qualified community group to hire independent technical advisers during the Work conducted pursuant to this Settlement Agreement. The TAP shall state that Respondent will provide and administer any additional amounts needed if EPA, in its unreviewable discretion, determines that the selected community group has demonstrated such a need as provided in the SOW. Upon its approval by EPA, the TAP shall be incorporated into and become enforceable under this Settlement Agreement.

41. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer, EPA Region 5 Emergency Planning and Response Branch at (Tel: (312) 353-2318) and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

b. In addition, Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11004, *et seq.*

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

42. After review of any plan, report or other deliverable that is required to be submitted for approval pursuant to this Settlement Agreement, including the SOW, EPA, after a reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within fifteen (15) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

43. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 42(a), (b), (c) or (e), Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submittal or portion thereof, Respondent shall not thereafter alter or amend such submittal or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 44(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties).

44. Resubmission

a. Upon receipt of a notice of disapproval, Respondent shall, within fifteen (15) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the 15-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 45 and 46.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks at the Site until receiving EPA approval, approval on condition, or modification of the RD Work Plan. While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

d. For all remaining deliverables not enumerated above in Subparagraph 44(c), Respondent shall proceed will all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point.

45. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may direct Respondent to correct the deficiencies. EPA also retains the right to modify or develop the plan, report or other deliverable Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

46. If upon resubmission, a plan, report, or deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

47. In the event that EPA takes over some of the tasks, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

48. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and become enforceable under this Settlement Agreement.

49. Neither the failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. PROGRESS REPORTS

50. Reporting.

a. Respondent shall submit a written progress report to EPA and the State concerning actions undertaken pursuant to this Settlement Agreement on the fifteenth (15th) calendar day of the month (except that if that day falls on a Saturday, Sunday, or federal or State holiday, on the next business day) after the date of receipt of EPA's approval of the RD Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit one (1) copy of all plans, reports, or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

51. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall include the following certification signed by a person who supervised or directed the preparation of that report:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in, or accompanying, this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

52. If Respondent owns or controls the Site, or any other property where access is needed to implement this Settlement Agreement, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, to conduct any activity related to this Settlement Agreement. Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence, this Section, and Section XII (Access to Information).

53. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Respondent shall immediately notify EPA if, after using its best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

54. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

55. If Respondent cannot obtain access agreements, EPA may obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate the Settlement Agreement. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to the Site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XII. ACCESS TO INFORMATION

56. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State at reasonable times, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

57. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA and the State, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

58. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and the State with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

59. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at, or around, the Site.

XIII. RETENTION OF RECORDS

60. During the pendency of this Settlement Agreement and until 10 years after the Respondent's receipt of EPA's notification that work has been completed, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after notification that work has been completed, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

61. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: (i) the title of the document, record, or

information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

62. The Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. COMPLIANCE WITH OTHER LAWS

63. Respondent shall undertake all action that this Settlement Agreement requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Settlement Agreement. The activities conducted pursuant to this Settlement Agreement, if approved by EPA, shall be considered consistent with the NCP.

64. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

65. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. PAYMENT OF RESPONSE COSTS

66. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, but at least one (1) year after the Effective Date, EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, including the costs of its contractors. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 68 of this Settlement Agreement, according to the following procedures.

(i) If the payment amount demanded in the bill is for $10,000 or greater, payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by EPA Region 5. Payment shall be accompanied

by a statement identifying the name and address of the party making payment, the Site name, EPA Region 5, the Site/Spill ID Number B5HQ.

(ii) If the amount demanded in the bill is less than $10,000, the Respondent may in lieu of the EFT procedures in Subparagraph 66(a)(i) make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and the EPA Site/Spill ID Number B5HQ. Respondent shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Respondent shall send notice that payment has been made to:

Peter Felitti
Site Attorney
Office of Regional Counsel
Mail Code C-14J
77 West Jackson
Chicago, IL 60604-3590

Margaret Gielniewski
Remedial Project Manager
Superfund Division
Mail Code SR-6J
77 West Jackson
Chicago, IL 60604-3590

c. The total amount that Respondent shall pay pursuant to Subparagraph 66(a) shall be deposited in the WPSC Marinette MGP Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

67. If the event that the payments for Future Response Costs are not made within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVIII. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 66.

68. Respondent may contest payment of any Future Response Costs billed under Paragraph 66 if it determines that EPA has made an accounting error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested

Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 68. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Wisconsin and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 66. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 66. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

69. Unless this Settlement Agreement expressly provides otherwise, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

70. **Informal Dispute Resolution** If the Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within fifteen (15) days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing to be effective. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

71. **Formal Dispute Resolution** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Superfund Branch Chief level or higher will issue a written decision on the dispute to the Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement

that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

72. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligations of Respondent under this Settlement except as provided by Paragraph 68 (Contesting Future Response Costs), as agreed by EPA.

73. Except as provided in Paragraph 80, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue for the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

74. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

75. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within ten (10) business days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

76. If EPA agrees that the delay or anticipated delay is attributable to *a force majeure* event, the time for performance of the obligations under this Settlement Agreement that are

affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

77. The Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 78 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by the Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by, and approved under, this Settlement Agreement.

78. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for a) failure to submit timely or adequate plans, reports or other documents as required by Section VIII (Work to be Performed) or b) for failure to implement the approved RD Work Plan.

Penalty Per Violation (Per Day)	Period of Noncompliance (Days)
$ 100	1-14
$ 200	15-30
$ 1,000	31-60
$5,000	61 and beyond

79. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90, Respondent shall be liable for a stipulated penalty in the amount of $50,000.

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section VIII (Work to be Performed), during the

period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (ii) with respect to a decision by the EPA Management Official at the Superfund Branch Chief level or higher, under Paragraph 71 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

81. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

82. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979007, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the Site name, EPA Region and Site/Spill ID Number B5BT, the EPA Docket Number, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to EPA as provide in Paragraph 66.

83. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

84. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until thirty (30) days after the dispute is resolved by agreement or by receipt of EPA's decision.

85. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81.

86. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a

portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph90. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

87. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

88. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement Agreement, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

89. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

90. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of any or all portion(s) of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs that the United States incurs in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

91. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, past response actions, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have been or will be incurred at the Site, including any claim under the United States Constitution, the Wisconsin Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.

92. Except as provided in Paragraph 95, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 89 (b), (c), and (e) - (g), but only to the extent that Respondent's claims

arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

93. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

94. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

95. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

96. The waiver in Paragraph 95 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria, if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

97. Agreement Not to Challenge Listing. Respondent agrees not to seek judicial review of a decision to list the Site on the NPL at any time after the Effective Date of this Settlement Agreement based on a claim that changed Site conditions that resulted from the performance of the Work under this Settlement Agreement in any way affected the basis for listing the Site.

XXII. OTHER CLAIMS

98. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

99. Except as expressly provided in Section XXI, Paragraph 95 and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

100. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

101. The Parties agree that the Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

102. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorney fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or

on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

103. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

104. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

105. At least thirty (30) days prior to commencing any On-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain, or shall require its contractor(s) to secure and maintain, until the first anniversary after issuance of Notice of Work Completion pursuant to Paragraph120, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

106. Within thirty (30) days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of five hundred thousand dollars ($500,000) in one or more of the following form to secure the full and final completion of Work by Respondent:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with the Respondent; including a demonstration that any such company satisfied the financial test requirements of 40 C.F.R. § 264.143(f); and/or

f. a corporate guarantee to perform the Work by the Respondent, including a demonstration that the Respondent satisfies the requirements of 40 C.F.R. §264.143(f).

107. Respondent shall, within 30 days of the Effective Date, obtain EPA's approval of the form of Respondent's financial assurance. Within 30 days of such approval, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer at U.S. EPA, Mailcode MF-10J, 77 West Jackson Blvd., Chicago, Illinois 60604.

108. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 106(e) or 106(f) of this Settlement Agreement, Respondent must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) The affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

109 . Respondent providing financial assurance by means of a demonstration or guarantee under Paragraph 106.e or 106.f must also:

a. Annually resubmit the documents described in Paragraph 108.b within 90 days after the close of the Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the Respondent or guarantor in addition to those specified in Paragraph 108.b; EPA may make such a request at any time based on a belief that the Respondent or guarantor may no longer meet the financial test requirements of this Section.

110. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

111. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 90, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 111.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 111.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 90, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 106.e or 106.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 20 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 111 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the

Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the WPSC Marinette MGP Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 111 must be reimbursed as Future Response Costs under Section XV (Payments for Response Costs).

112. Modification of Amount, Form, or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 107, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVI (Dispute Resolution). Respondent may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 107.

113. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under Paragraph 120; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVI (Dispute Resolution).

XXVII. INTEGRATION/APPENDICES

114. This Settlement Agreement, its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

115. In the event of a conflict between any provision of this Settlement Agreement and the provisions of any document attached to this Settlement Agreement or submitted or approved pursuant to this Settlement Agreement, the provisions of this Settlement Agreement shall control.

116. The following appendices are attached to and incorporated into this Settlement Agreement:

- "Appendix A" is the SOW.
- "Appendix B" is the ROD.

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

117. This Settlement Agreement shall be effective ten (10) days after the Settlement Agreement is signed by EPA's Director of the Superfund Division or his/her delegatee.

118. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

119. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

120. When EPA determines that all Work has been fully performed for the Site, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that the Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit any required deliverable(s) in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan and any required deliverable(s) shall be a violation of this Settlement Agreement.

Agreed this 9TH day of MARCH, 2018.

For Respondent WISCONSIN PUBLIC SERVICE CORPORATION

Signature: Bruce W. Ramme

Name: BRUCE W. RAMME

Title: VICE PRESIDENT ENVIRONMENTAL

Address: 333 W. EVERETT STREET

MILWAUKEE, WI 53203

It is so ORDERED AND AGREED this 16th day of March, 2018.

BY: _____ DATE: 3/16/18
Robert A. Kaplan, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

EFFECTIVE DATE: 3/26/18

WISCONSIN PUBLIC SERVICE CORPORATION
MARINETTE MANUFACTURED GAS PLANT
SUPERFUND ALTERNATIVE SITE

APPENDIX B

Record of Decision

Wisconsin Public Service Corporation Marinette Former Manufactured Gas Plant Site Marinette, Wisconsin

EPA ID: WIN000509952

United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

September 2017

Acronyms and Definitions

°F	Degrees Fahrenheit
§ NR	Wisconsin Administrative State Statute from the Department of Natural Resources
µg/L	Micrograms per liter (also equals parts per billion)
AOC	Administrative Order on Consent
ARAR	Applicable or Relevant and Appropriate Requirement
BaP	Benzo(a)pyrene
BERA	Baseline Ecological Risk Assessment
bgs	Below ground surface
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act also known as Superfund
CERCLIS	Comprehensive, Environmental Response, Compensation, And Liability Information System
CFR	Code of Federal Regulations
cfs	Cubic Feet per Second
City	City of Marinette
CO	Continuing Obligation
COC	Contaminant of Concern
CR	Cancer Risk
CWG	Carbureted Water Gas
CY	Cubic Yards
ELCR	Excess Lifetime Cancer Risk
EPA	United States Environmental Protection Agency
FS	Feasibility Study
ft	feet
ft^3	Cubic Feet
GIS	Geographic Information System
HHRA	Human Health Risk Assessment
HI	Hazard Index
HQ	Hazard Quotient
ICs	Institutional Controls
M	Million
MCL	Maximum Contaminant Level
mg/kg	Milligrams per kilogram
MGP	Manufactured Gas Plant
msl	Mean Sea Level
NAPL	Non-aqueous Phase Liquid
NCP	National Oil and Hazardous Substances Pollution Contingency Plan

NPL	National Priorities List
NR 140	Wisconsin NR 140 Groundwater Enforcement Standard
NRT	Natural Resource Technology, technical contractor to WPSC
NTCRA	Non-time Critical Removal Action
O&M	Operation and Maintenance
PAHs	Polycyclic Aromatic Hydrocarbons
PEC	Probable Effects Cause
POTW	Publically Owned Treatment Works
PRG	Preliminary Remediation Goal
PRP	Potentially Responsible Party
PVOC	Petroleum Volatile Organic Compounds
RAL	Remedial Action Level
RAO	Remedial Action Objectives
RBC	Risk-based Concentration
RCM	Reactive Core Mat
RD	Remedial Design
RfD	Reference Dose
RI	Remedial Investigation
RME	Reasonable Maximum Exposure
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act
SF	Slope Factor
TBC	To-be Considered
USGS	United States Geologic Survey
WDNR	Wisconsin Department of Natural Resources
WPSC	Wisconsin Public Service Corporation (the PRP; now owned by WEC Business Services, LLC)
WWTP	Waste Water Treatment Plant

Table of Contents

Part 1. Declaration

A. Site Name and Location

Wisconsin Public Service Corporation Marinette Former Manufactured Gas Plant Superfund Alternative Site
Marinette, Wisconsin
Comprehensive, Environmental Response, Compensation, And Liability Information System (CERCLIS) ID# WIN000509952

B. Statement of Basis and Purpose

This Record of Decision (ROD) presents the U.S. Environmental Protection Agency's (EPA) selected remedy for the Wisconsin Public Service Corporation (WPSC) Marinette Former Manufactured Gas Plant (MGP) Superfund Alternative Site, which was chosen in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), and, to the extent practicable, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This decision document addresses MGP waste, including non-aqueous phase liquid (NAPL) and polycyclic aromatic hydrocarbons (PAHs) in soil, groundwater, soil gas, and sediment. This is the final remedy for the WPSC Marinette MGP site.

This decision is based on the information contained in the Administrative Record for the WPSC Marinette MGP Site. The Administrative Record Index (see Appendix A) identifies each of the items comprising the Administrative Record upon which the selection of the remedial action is based. The Administrative Record file is available for review at the Stephenson Public Library and at the EPA Region 5 Records Center in Chicago, Illinois. Information on the Site can also be found at Wisconsin Department of Natural Resources' (WDNR's) Green Bay Office in Green Bay, Wisconsin.

The State of Wisconsin (Wisconsin DNR) has indicated concurrence with the selected remedy. EPA will place the State's concurrence letter into the Site Administrative Record upon receipt.

C. Assessment of Site

EPA has determined that the response action selected in this ROD is necessary to protect the public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment.

D. Description of Selected Remedy

EPA has selected and modified Alternative 3 to effectively treat NAPL- and PAH-contaminated soil, which constitutes the principal threat waste. Modified Alternative 3 will consist of excavation and off-site disposal of accessible source material located within the Boom Landing Zone and the waste water treatment plant (WWTP) Zone; installation of horizontal engineered barriers over surficial soil exceeding preliminary remediation goals (PRGs); in-situ treatment of affected groundwater; effectiveness monitoring of the existing reactive core mat (RCM) and dredge inventory remaining after the Non-time Critical Removal Action (NTCRA); and

implementation of institutional controls (ICs) to manage remaining potential soil, groundwater, soil gas, and sediment risks.

The modification to Alternative 3 will limit the extent of excavation across WWTP Zone based on soil sample results. If the top two feet of soil show industrial screening level exceedances that could pose direct contact concerns, horizontal engineered barriers and ICs will be needed to prevent risk.

The selected remedy is estimated to cost $7.63 million (M), which includes an estimated capital cost of $6.18M and an estimated present-worth operation and maintenance (O&M) cost of $1.45M. Actual costs may vary, but are expected to remain in the range of -30% and +50% of the estimated costs.

The selected remedy consists of the following components:

1. ***Excavation and off-site disposal of accessible source material located within the Boom Landing Zone***
    a. Complete predesign investigation to further define horizontal and vertical extent of excavation and provide waste characterization sampling.
    b. Obtain access agreements and demolish/remove parking lot, fish house, utilities, and existing concrete and asphalt pavements in the Boom Landing Zone.
    c. Install temporary shoring to support deeper excavations.
    d. Install a temporary dewatering system to lower the water table within the excavation footprint.
    e. Excavate non-affected overburden soil and stockpile on-site for use as post-excavation backfill.
    f. Excavate MGP-source material and transport to Subtitle D Landfill.
    g. Backfill excavation to surrounding grades with granular backfill and stockpiled overburden material.
    h. Restore Site to previous conditions.

2. ***Excavation and off-site disposal of accessible source material located within the Waste Water Treatment Plant (WWTP) Zone***
    a. Complete predesign investigation and waste characterization sampling to further define horizontal and vertical extent of excavation and define areas requiring horizontal engineered barriers.
    b. Obtain access agreement from the City of Marinette (City).
    c. Install temporary shoring to support deeper excavations.
    d. Install a temporary dewatering system to lower the water table within the excavation footprint.
    e. Excavate non-affected overburden soil and stockpile on-site for use as post-excavation backfill.
    f. Excavate MGP-source material and transport to Subtitle D Landfill.
    g. Backfill excavation to surrounding grades with granular backfill and stockpiled overburden material.
    h. Restore Site to previous conditions.

3. ***Horizontal Engineered Surface Barriers at Boom Landing and WWTP Zones***
    a. Monitor and maintain existing engineered surface barriers including paved parking lots and paved roadways.
    b. Assess and mitigate potential exposure to surficial soil containing contaminants of concern (COCs) above PRGs by backfilling the two feet depth of excavated areas with 18 inches of clean fill and six inches of clean topsoil. Alternative barrier approaches, including gravel and/or asphalt, will be evaluated during the remedial design (RD) phase.

4. ***In-situ Groundwater Treatment***
    a. Perform bench-scale testing of Site soils and groundwater with varying types and percentages of reagents to determine the most effective approach to address COCs in groundwater.
    b. One-time placement of oxidant into the exposed saturated zone resulting from excavation of Boom Landing and WWTP Zones.
    c. Groundwater monitoring until groundwater PRGs are achieved.

5. ***Sediment Monitoring***
    a. Regular effectiveness monitoring of the Reactive Core Mat (RCM) to check for ebullition or migration of MGP source materials that were not addressed during the 2012 removal action.
    b. Monitor the 160 cubic yards (CY) of dredge inventory that remained after the NTCRA to ensure at least six inches of clean sand remain over those areas with MGP-residuals remaining, and that the 0-6 inch zone remains below remedial action levels (RALs).

6. ***Institutional Controls (ICs) for Soil, Soil Gas, Groundwater, and Sediment***
    a. Boundaries for ICs will be based on delineation of MGP COCs on affected parcels to PRGs. Wisconsin DNR' s Geographic Information System (GIS) Registry will be used to implement institutional controls; however, alternate continuing obligation mechanisms, including deed restrictions, may be considered as part of the remedial design. Requirements, limitations, or conditions relating to restrictions of sites listed on the Wisconsin DNR GIS database are required to be met by all property owners [Wisconsin State Statutes (§) 292.12(5)]. As a result, the statute requires that the GIS database conditions be maintained for a property, regardless of changes in ownership. A violation of Section 292.12 is enforceable under Wisconsin § 292.93 and 292.99.

E. Statutory Determinations

The selected remedy is protective of human health and the environment, complies with Federal and State applicable or relevant and appropriate requirements (ARAR) to the remedial action (unless justified by a waiver), is cost-effective, and utilizes permanent solutions and alternative treatment (or resource recovery) technologies to the maximum extent practicable.

This remedy also satisfies the statutory preference for treatment as a principal element of the remedy in that the selected remedy uses treatment to reduce the toxicity, mobility, and/or volume of hazardous substances, pollutants, or contaminants.

The NCP establishes an expectation that EPA will use treatment to address the principal threats posed by a site wherever practicable (NCP §300.430(a)(1)(iii)(A)). The "principal threat" concept is applied to the characterization of "source materials" at a Superfund site. A source material is material that includes or contains hazardous substances, pollutants or contaminants that act as a reservoir for migration of contamination to groundwater, surface water or air, or acts as a source for direct exposure.

The principal threat waste at the WPSC Marinette MGP Site is PAH- and NAPL- contaminated soil because the toxicity of the material poses a potential risk of 10-3 or greater and contributes to groundwater contamination, as defined in *A Guide to Principal Threat and Low Level Threat Wastes*, Office of Solid Waste and Emergency Response 9380.3-06FS, November 1991.

This remedy addresses remaining site-wide contamination, and will result in hazardous substances, pollutants, or contaminants remaining on-site above levels that allow for unlimited use and unrestricted exposure until remedial action objectives are achieved. A statutory review will be conducted every five years after initiation of remedial action, until remedial action objectives are achieved, to ensure that the remedy is, or will be, protective of human health and the environment.

F. ROD Data Certification Checklist

The following information is included in the Decision Summary (Part 2) of this ROD, while additional information can be found in the Site Administrative Record file:

- Chemicals of concern (COCs) and their respective concentrations (see Part 2.E.2.e. and 2.E.3.f.);
- Baseline risk represented by the COCs (see Part 2.G.1 - Summary of the Human Health Risk Assessment);
- Remediation goals (i.e., cleanup goals) established for the COCs and the basis for the goals (see Part 2.H - Remedial Action Objectives);
- How source materials constituting principal threats are addressed (see Part 2.K - Principal Threat Wastes Selected Remedy);
- Current and reasonably anticipated future land use assumptions and current and potential future beneficial uses of groundwater used in the Human Health Risk Assessment and this ROD (see Part 2.F – Current and Future Site and Resource Uses);
- Potential land and groundwater use that will be available at the Site as a result of the Selected Remedy (see Part 2.F – Current and Future Site and Resource Uses and Part 2.H - Remedial Action Objectives);
- Estimated capital, lifetime O&M, and total present worth costs; discount rate; and the number of years over which the remedy cost estimates are projected (see Part 2.I – Description of Alternatives); and
- Key factor(s) that led to selecting the remedy (see Part 2.J - Comparative Analysis of Alternatives).

G. Authorizing Signature

EPA, as the lead agency for the Site, formally authorizes this ROD.

Margaret M. Guerriero, Acting Director
Superfund Division
U.S. EPA - Region 5

September 27, 2017
Date

Wisconsin DNR, as the support agency for the WPSC Marinette MGP Site, indicated concurrence with this ROD. The state's concurrence letter will be added to the Administrative Record upon receipt.

Part 2. Decision Summary

A. Site Name, Location, and Brief Description

The 4-acre former WPSC Marinette MGP property, located at 1603 Ely Street, is currently owned by the City of Marinette (City) and 1428 Main Street Holdings (Figure 1). The 1428 Main Street Holdings property was previously owned by Goodwill Industries and may also be referred to as the "former Goodwill property" in this and other Site-related documents. Currently, the City operates a WWTP (WWTP) at the property. The portion of the former MGP facility located on the 1428 Main Street Holdings property is currently a parking lot for the commercial building located on the property. The former MGP property is within 700 feet of the Menominee River. The former MGP property is bounded on the north by Mann Street and railroad tracks, on the southwest by Ludington Street, and on the southeast by Ely Street (Figure 2).

The approximate area of the of the Site, illustrated in Figure 2, is 15 acres and includes properties owned by WPSC, Canadian National Railroad, Marinette Central Broadcasting, and the City, which owns Boom Landing, the WWTP, the Fire Station, and City rights-of-way. The upland portion of the Site is primarily located within heavy manufacturing and park districts; however, small portions of the Site also fall within community business and waterfront overlay districts. Most of the upland Site is covered with pavement, buildings, or manicured lawns.

The City has constructed a public boat launch (Boom Landing) along the Menominee River adjacent to the former MGP property where a former slough/logrun had passed through the property. The boat landing is located approximately 2 miles from the mouth into Lake Michigan. The Menominee River, which separates Wisconsin from Michigan's Upper Peninsula, is a gaining stream that receives groundwater and surface water from the Marinette area and discharges into Lake Michigan (Green Bay). According to the bathymetric surveys, water depths near the Site range from 1 to 20 feet. The river is nearly 1,075 feet wide near the Site.

B. Site History and Enforcement Activities

B.1. Site History

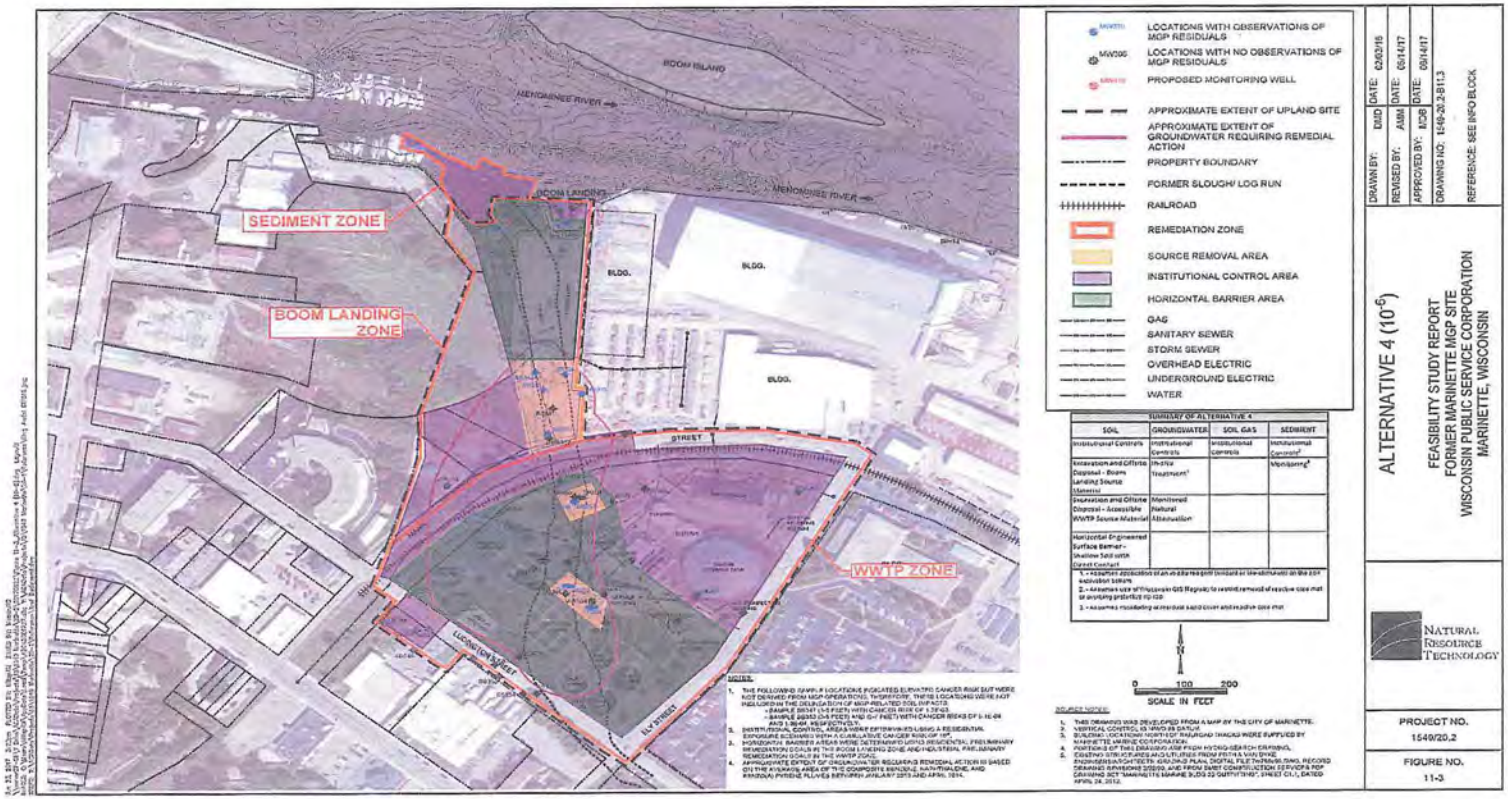
MGPs were industrial facilities that were found in every sizable town or city in the U.S. from the 1820s to right after World War II (WWII). MGPs heated coal in large industrial ovens to produce manufactured gas used for street and home lighting, heating, and cooking. After the war, natural gas use replaced manufactured gas use because it was abundant, lower priced, and overall cleaner for the environment. Some MGPs continued to operate after WWII, and most ceased operations by the 1960s and were torn down. Typically, the aboveground structures, such as buildings, tar/oil tanks, and storage sheds, were demolished and the foundations were backfilled, leaving hardly any visible traces of the former operations. Belowground structures such as traces of underground piping and storage tanks, along with residual contaminants, were often left behind.

Figure 1. Site Location Map

SOURCE NOTES:

1. NATIONAL GEOGRAPHIC TOPO. 1:24,000-SCALE MAPS FOR THE UNITED STATES. THE TOPO! MAPS ARE SEAMLESS, SCANNED IMAGES OF UNITED STATES GEOLOGICAL SURVEY (USGS) PAPER TOPOGRAPHIC MAPS. FOR MORE INFORMATION ON THIS MAP, VISIT US ONLINE AT HTTP://GOTO.ARCGISONLINE.COM/MAPS/USA_TOPO_MAPS COPYRIGHT:© 2011 NATIONAL GEOGRAPHIC SOCIETY, I-CUBED
2. COORDINATE SYSTEM IS WISCONSIN COUNTY COORDINATE SYSTEM, MARINETTE COUNTY, US FOOT.

Figure 2. Site Map and Extent of Contamination



The former WPSC Marinette MGP facility was constructed between 1901 and 1910 and operated through 1960. Prior to 1903, the Marinette Lighting Company owned the former MGP property. In 1903, electric and gas utilities in Marinette, Wisconsin, and Menominee, Michigan, were merged to form the Menominee and Marinette Light and Traction Company.

In 1922, WPSC acquired control of the Menominee and Marinette Light and Traction Company and operated it as a wholly owned subsidiary. In 1953, the subsidiary was merged with the parent company. In 1962, the former MGP property was sold to the City of Marinette under a land contract. The City subsequently used the property to expand the WWTP facilities.

The MGP facility operated with two methods of coal gas production. Coal gas production from construction of the facility to 1928 was by retort, while coal gas production from 1928 to 1960 used the carbureted water gas (CWG) process. Coal tar was a valuable commodity and typically sold as a chemical feedstock and for wood treatment; the timber industry thrived in the Marinette area. Based on the location of the tar tanks adjacent to the railroad tracks, it is reasonable to presume that a significant amount of tar produced at the MGP facility was shipped off-site.

Coal gas production from construction of the facility to 1928 involved heating and volatilizing coal in an airtight chamber (retort). At retort temperatures (about 2,200 degrees Fahrenheit [°F]), the coal decomposed into gas and tar. The gas was then passed through a purifier to remove impurities such as sulfur, carbon dioxide, cyanide, and ammonia. Dry purifiers used trays and sieves containing lime or hydrated iron oxide mixed with wood chips. The gas was then stored in large holders at the facility prior to distribution for lighting and heating.

Coal gas production from 1928 to 1960 used the CWG process. This process involved passing air and steam over incandescent coal in a brick-filled vessel to form a combustible gas, which was then enriched by squirting a fine mist of oil over the bricks. The gas was then purified and stored in holders prior to distribution. In 1948, propane was introduced as a fuel and used in combination with CWG to meet the demand for gas for space heating. Natural gas pipelines subsequently replaced the need for propane and manufactured gas, and the MGP in Marinette ceased operation in 1960.

The City's WWTP was originally constructed east of the former slough in 1938 and was expanded twice—approximately in 1945 and again in 1952. When the City purchased the former MGP property in 1962, it expanded the WWTP again in 1972 and 1989 to its current size.

B.2. History of Enforcement Actions

In 2006, Wisconsin Public Service Corporation (WPSC) entered into an Administrative Order on Consent (AOC) with the United States Environmental Protection Agency (EPA). Under the AOC, WPSC agreed to prepare and perform a remedial investigation (RI) and feasibility study (FS) at each of six Sites: WPSC Marinette MGP, WPSC Manitowoc MGP, WPSC Green Bay MGP, WPSC Two Rivers MGP, and WPSC Oshkosh MGP Superfund Alternative Sites. The AOC is a voluntary settlement agreement to enter the six aforementioned Sites into the Superfund Alternative Sites Approach, that follows the requirements of the Superfund law and National Oil and Hazardous Substances Pollution Contingency Plan (NCP) without listing the Site on the EPA's National Priorities List (NPL).

In 2012, WPSC entered into an AOC with EPA to perform a Non-Time Critical Removal Action (NTCRA) to address contaminated sediments and near-shore NAPL.

From October 2012 through March 2013, WPSC conducted the NTCRA and removed approximately 14,799 cubic yards of MGP-impacted sediments down to 22.8 parts per million (ppm) Total (13) PAHs. An additional 422 cubic yards were removed for navigational purposes as part of an access agreement between WPSC and the Nestegg Marine, an adjacent property. The removal action objective was to mechanically excavate contaminated sediments in areas with total PAH concentrations and NAPL until post-dredge verification samples indicated that the remaining sediments contained Total (13) PAH concentrations less than the remedial action level (RAL) of 22.8 ppm and no visual NAPL remaining. The figure 22.8 ppm was selected because it is Wisconsin DNR's probable effects cause at which PAHs impact microorganisms.

Dredging progressed upland into the shoreline in areas where NAPL was observed to be present. Due to upland land use and associated space constraints, not all upland NAPL was able to be removed. Consequently, reactive core mat (RCM) was placed along the shoreline in these areas to prevent future migration of upland NAPL into the river. This RCM extends out onto the riverbed from the shoreline and covers some of the residual sediments on the irregular bedrock surface with concentrations of Total (13) PAH greater than 22.8 ppm. Upland dredging and excavation required removal and replacement of an existing sewer outfall structure on the shoreline. In this area, RCM was placed on the side slope of the upland excavation prior to backfill to prevent contamination of clean backfill adjacent to the replacement outfall structure.

Sediment removed from the river was mixed with stabilization additives on a geomembrane-lined, asphalt pad before being transported to Waste Management's Menominee, Michigan, Landfill for disposal. Debris encountered during dredging activities and from removal of the former outfall structure was also disposed of at the aforementioned landfill under a separate waste profile. Sediment contact water collected at the stabilization pad was treated on a batch basis with an on-site treatment system in accordance with the substantive requirements of the Wisconsin Pollution Discharge Elimination System (WPDES).

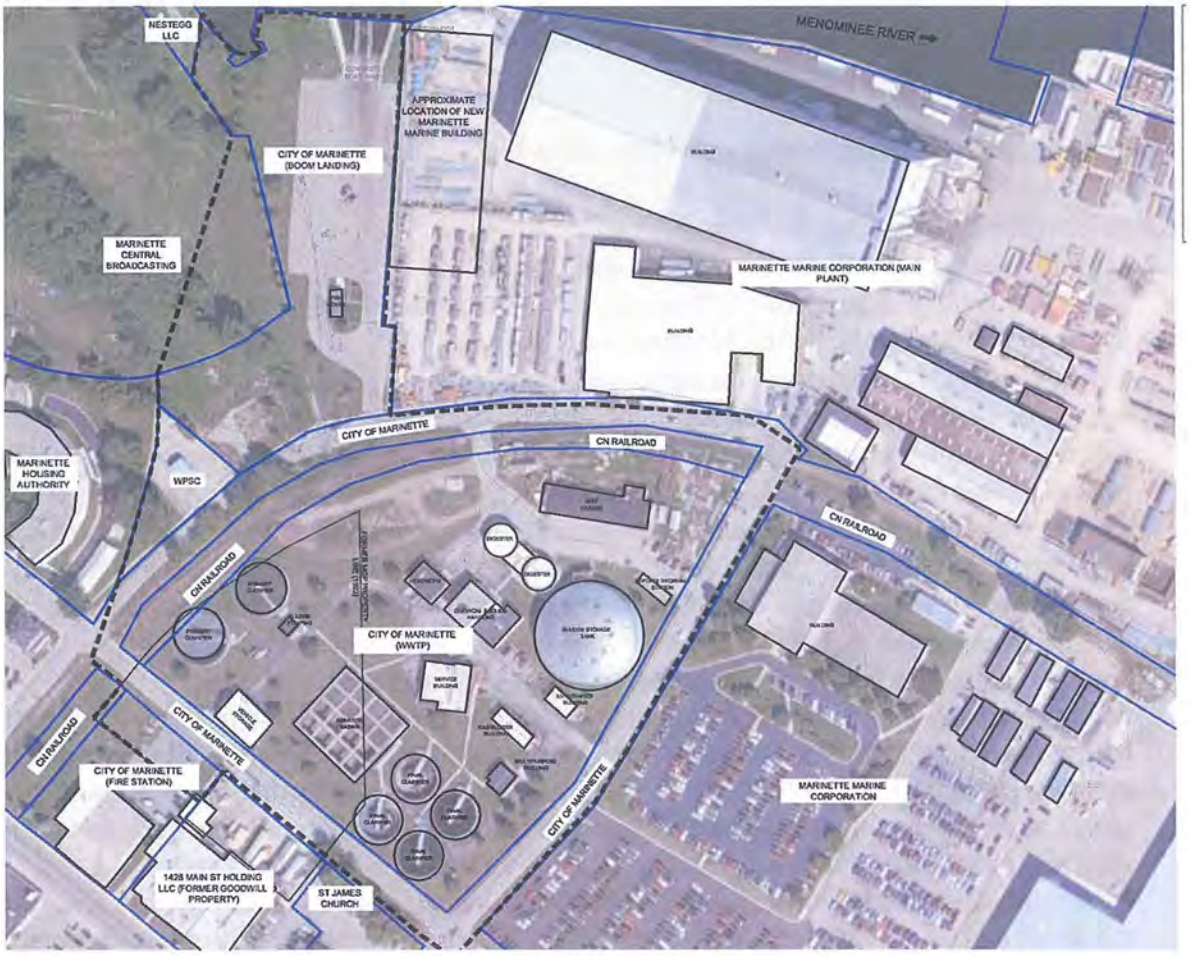
C. Community Participation

Since 2006, EPA conducted community interviews, created a community involvement plan, and participated in one public meeting to present the alternative selected for the Non-Time Critical Removal Action (NTCRA) of NAPL in sediments and near-shore soils.

EPA made the RI and FS Reports and the Proposed Plan available to the public in May and July 2017. These documents are found in the Administrative Record file and the information repository maintained at the Stephenson Public Library.

EPA published a notice of availability of these three documents in the *EagleHerald* on July 16, 2017 and held a public comment period on the Proposed Plan from July 17 to August 16, 2017. EPA indicated that it would accept public comments via mail, email, and electronic submissions through its website. The agency received four public comments on the Proposed Plan. Comments and responses can be found in the Responsiveness Summary at the end of this document.

Figure 3. WPSC Marinette MGP Current Site Layout



D. Scope and Role of Response Action

This ROD addresses site-wide MGP contaminants and will be the final RA for the WPSC Marinette MGP Site. The selected remedy will actively treat the COCs in the soil, soil gas, and groundwater. Although the majority of COCs in sediment were addressed during the 2012 NTCRA, the remedy includes components to monitor remaining COCs under the RCM and in the sediment.

E. Site Characteristics

The WPSC Marinette MGP Site is located in Marinette, Wisconsin, at 1603 Ely Street, Marinette, Marinette County. The Site spans approximately 15 acres, which includes the four acres of the former MGP property currently owned by the City of Marinette (City) and 1428 Main Street Holdings, and 11 acres of MGP-impacted soil, groundwater, and sediment spanning from the former MGP property through Boom Landing Park and into the Menominee River sediments. The Site includes properties owned by WPSC, Canadian National Railway Company, Marinette Central Broadcasting, the City of Marinette (Boom Landing Park, the waste water treatment plant, fire station, and City right-of-ways (Figure 2, page 2-7).

The former MGP property is within 700 feet of the Menominee River. The WWTP property is bounded on the north by Mann Street and railroad tracks, on the southwest by Ludington Street, and Ely Street on the southeast. The City built Boom Landing Park along the Menominee River, adjacent to the property through which a former slough ran, approximately two miles from the mouth of Lake Michigan.

The following sections present a brief overview of the Site.

E.1. Environmental Setting

E.1.a. Regional Setting, Demography, and Land Use

- Marinette is located in northeast Wisconsin and is separated from Menominee, Michigan, in the Upper Peninsula, by the Menominee River.
- Marinette County, Wisconsin encompasses approximately 1,402 square miles of area, with agricultural land use being the dominant classification. The population of Marinette County is 41,749 people (2010 Census). The greatest concentrations of people are located in and around the City of Marinette.
- The City of Marinette encompasses approximately 8 square miles, and has a population of approximately 10,968 people (2010 Census). The City of Marinette has a mixture of agricultural, residential, and industrial land use, with residential use being dominant.
- The land around the former MGP facility has been zoned for residential, commercial/industrial (including communications/utilities and governmental/institutional), and park district uses (Figure 3). According to the Marinette City Assessor's Public Assess website for Marinette, the former MGP facility is zoned as communications/utilities use. Most of the land surrounding the former MGP facility is zoned as heavy manufacturing or business district. Residential zoning can be found to the east/northeast across the street from the WWTP on the corner of Mann Street and Ludington Street. Additional residential zoning is located approximately a block away to the south and southeast along Main Street. This zoning information was obtained through the Bay Lakes Regional Planning Commission GIS website and the August 3, 2009 city of Marinette zoning map.
- As discussed above, groundwater is not used as a drinking water source for the city of Marinette. The City collects surface water from intake pipes located on the Green Bay to supply potable water.

E.1.b. Topography

Based on the United States Geologic Survey (USGS) Marinette West Quadrangle, relief within one mile of the Site is approximately 30 feet, ranging from approximately 575 feet mean sea level (msl) at the Menominee River to approximately 605 feet msl northeast of the Site in the City of Marinette. The ground surface elevation for the majority of existing groundwater monitoring wells ranges between 584 and 598 feet msl; the Site slopes towards the Menominee River. The elevation of the Menominee River is closely tied to the elevation of Lake Michigan and was ranges between 578 feet msl in October 2003 [Natural Resource Technology (NRT), June 2004] and 577 feet msl under normal conditions (note the October 2012 staff gauge reading was affected by sediment removal activities). Surface water readings collected during sediment sampling in April 2012 averaged 576.16 feet.

E.1.c. Geology

The regional geology of Marinette consists of sedimentary deposits with unconsolidated deposits over the top. Fill is encountered on top of these unconsolidated deposits, at or near the surface over much of the Site. At locations in or adjacent to the former slough, the fill layer is as great as 18 feet thick. The fill material typically consists of fine sands with discontinuous clay, silt, and gravel. Glass, wood, brick, and concrete were also found, especially in the area of the former slough and the former MGP building locations. Within the former slough, the fill was often black in color and occasionally exhibited strong odors. In the vicinity of the former MGP facility, the fill material consists of fine sand, silt, and clay with occasional bedrock fragments and the aforementioned debris.

Beyond the immediate vicinity of the slough, glacial till deposits were found below the fill. The glacial deposits consist of fine sand, silt, and clay and may inhibit the movement of NAPL and/or groundwater. Bedrock occurs approximately 20 feet below ground surface (bgs) and appears to slope towards the Menominee River.

The Wisconsin-Lake Michigan basin contains three main aquifers, the unlithified sand and gravel aquifer, the Niagara dolomite aquifer, and the Cambrian sandstone aquifer. The sand and gravel glacial alluvium in the basin is a significant source of water. Generally, groundwater flow in the Niagara and Cambrian aquifers is north, northeast toward Lake Michigan. Recharge to the aquifers is local, and paths of movement are short.

The Site groundwater is monitored in three different zones including the shallow sand wells screened at 580 feet elevation, deep sand wells screened at 555 feet to monitor the deep sand above bedrock, and the bedrock wells screened at 525 feet and monitor the shallow bedrock.

E.1.d. Hydrogeology

Four aquifer systems have been identified in the Marinette area (Oakes and Hamilton, 1973). These aquifers are: 1) the sand-and-gravel aquifer of the unconsolidated glacial deposits; 2) the Galena-Platteville aquifer; 3) the sandstone aquifer of the Ordovician and Cambrian bedrock; and 4) the crystalline bedrock aquifer. The sand and gravel aquifer is very thin and produces less than 100 gallons per minute in the southern portion of Marinette County. Generally, groundwater flow in the Quaternary sand and gravel is toward rivers and streams eventually discharging into Green Bay (Lake Michigan). Recharge is local from precipitation and surface water bodies.

E.1.e. Surface Water Hydrology

The Menominee River at Marinette forms the boundary between the southern tip of Michigan's Upper Peninsula and Wisconsin's northeast corner. The river is approximately 118 miles long as it flows into Lake Michigan. The drainage area for the Menominee River is 4,070 square miles according to the USGS.

The USGS had a stream monitoring station (USGS 04067651) in the mouth of the river until October 1995. The total flow from November 1994 until October 1995 was 36,933 cubic feet per second (cfs) with the greatest monthly flow of 5,585 cfs (May 1995) and the lowest monthly flow of 1,920 cfs (February 1995). The average daily flow during this period was 3,085 cfs.

Currently, the closest USGS stream monitoring station (USGS 04067500) to the Site is 18 miles upstream. The total flow at this station from October 1994 till September 1995 was 35,522 cfs with the greatest monthly flow of 5,391 cfs (May 1995) and the lowest monthly flow of 1,854 cfs (February 1995).

The average daily flow during this period was 2,570 cfs. The total flow from September 2007 till September 2008 (most recent data) was 31,199 cfs with the greatest monthly flow of 7,786 cfs (April 2008) and the lowest monthly flow of 1,170 cfs (September 2008). The average daily flow during this period was 2,668 cfs.

The 1978 Federal Emergency Management Agency map provided in Appendix A of the site-specific workplan for RI/FS indicates the 100-year floodplain is at Elevation 585 msl.

E.2. Climate

The Site is located in northeast, Wisconsin, which has a continental climate characterized by moderate winters and warm summers. Cold winters and warm summers are moderated by the thermal mass of Lake Michigan.

Climate conditions for the Marinette area were gathered at Weather Station 475091 of the Wisconsin State Climatology office website1. The weather station is located at latitude 45° 5' N, longitude 87°38' W, elevation 610 feet, in Marinette County, Wisconsin. Monthly temperatures, precipitation, and snowfall from 1971 – 2000 are summarized in the tables below, and taken from the Wisconsin State Climatology Office website, http://www.aos.wisc.edu/~sco.

Temperature Summary
Station ID: 475091 Marinette, WI
1971 – 2000 Averages

Element	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANN
Max °F	24.7	28.9	39.2	52.6	66.2	76.1	81.3	78.5	69.4	56.9	42.3	29.6	53.8
Min °F	8.2	12.4	22.0	33.2	44.8	54.2	59.7	58.1	50.4	39.4	27.5	15.0	35.4
Mean °F	16.5	20.7	30.6	42.9	55.5	65.2	70.5	68.3	59.9	48.2	34.9	22.3	44.6

°F—Degrees Fahrenheit

Precipitation Summary
Station ID: 475091 Marinette, WI
1971-2000 Averages

Element	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANN
Precipitation (inches)	2.00	1.33	2.39	2.75	3.06	3.60	3.44	3.35	3.53	2.47	2.69	1.79	32.40

Snowfall Summary
Station ID: 475091 Marinette, WI
1971-2000 Averages

Element	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANN
Snow (inches)	15.8	9.9	9.1	2.7	0.1	0.0	0.0	0.0	0.0	0.1	3.2	12.8	53.7

E.2.a. Ecology

The WPSC Marinette MGP Site is located in the northern Lake Michigan coastal ecoregion. This ecoregion encompasses 2,004 square miles (1,282,877 acres) in Marinette, Oconto, Shawano, and Door counties and represents 3.6% of the area of the state of Wisconsin.

Historically, the uplands were almost entirely covered by maple-basswood and aspen-birch forests. Today, more than 64% is now un-forested with 51% covered by agricultural crops, 6% grassland, 6% non-forested wetlands, 0.1% shrubland, and 1% urbanized areas.

A review of the Natural Heritage Inventory Database for and within one mile of the Site resulted in the identification of a federally protected bird species. However, the identified bird species is located a significant distance from the former MGP Site and the species will not be adversely affected from projected Site activities. No other state or federally threatened or endangered species were identified. Additionally, no documented wetlands were identified.

E.3. Remedial Investigation Results

RI activities occurred from November 2011 through RI Report completion in October 2016. The Regional screening levels (RSLs) presented below do not reflect the RSL updates released by EPA in May 2016 and corresponding June 2016 updates from Wisconsin DNR. Additional sampling will be completed as part of the Remedial Design phase to further define areas of remediation.

E.3.a. Soil Investigation Summary

Of the 78 soil samples analyzed for Benzene, 3 exceeded industrial screening level (SL) of 5.1 mg/kg. Of the 71 soil samples analyzed for Ethylbenzene, 4 exceeded the industrial SL of 25 mg/kg. Of the 64 samples analyzed for Total Xylenes, 0 exceeded the industrial SL of 2,500 mg/kg.

Of the 82 soil samples analyzed for Benzo(a)anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene, Benzo(k)fluoranthene, Chrysene, and Naphthalene, 22 samples exceeded the industrial SL of 2.9 mg/kg; 37 exceeded the industrial SL of 0.29 mg/kg; 22 exceeded the industrial SL of 2.9 mg/kg; 11 exceeded the industrial SL of 29 mg/kg; 3 exceeded the industrial SL of 290 mg/kg; and 12 exceeded the industrial SL of 17 mg/kg for each listed parameter respectively.

E.3.b. Groundwater Investigation Summary

Of the 163 groundwater samples analyzed for Benzene and Ethylbenzene, 27 samples exceeded the residential SL of 5 µg/L for Benzene and four exceeded the residential SL of 700 µg/L for Ethylbenzene.

Of the 163 groundwater samples analyzed for Benzo(a)anthracene, Benzo(a)pyrene (BaP), Benzo(b)fluoranthene, Benzo(k)fluoranthene, Chrysene, and Naphthalene, 49 samples exceeded the residential SL of 0.029 µg/L; 23 exceeded the residential SL of 0.2 µg/L; 20 exceeded the residential SL of 0.2 µg/L; 14 exceeded the residential SL of 0.29 µg/L; 25 exceeded the residential SL of 0.2 µg/L; and 16 exceeded the residential SL of 100 µg/L for each listed parameter respectively.

E.3.c. Soil Gas Investigation Summary

Of the 46 groundwater samples analyzed for Benzene, Ethylbenzene, Total Xylenes, and Naphthalene, 5 samples exceeded the industrial SL of 16 µg/m³ for Benzene, 3 exceeded the industrial SL of 49 µg/ m³ for Ethylbenzene, 1 exceeded the industrial SL of 4,400 µg/m³ for Total Xylenes, and 8 exceeded the industrial SL of 3.6 µg/m³ for Naphthalene.

E.3.d. Surface Water and Sediment Investigations Summary

Prior to the 2012-2013 NTCRA performed on PAH-contaminated sediment and near-shore non-aqueous phase liquid (NAPL), more than half of the 249+ sediment samples collected had petroleum volatile organic compounds (PVOCs) and Site-specific PAHs above ecological SLs. Of the 234 sediment samples analyzed for Total PAHs, 55 samples exceeded the Sediment NTCRA goal of 22.8 mg/kg. After the NTCRA, only 8 samples exceed the NTCRA cleanup range between 22.8 mg/kg and 50 mg/kg as taken on the surface weighted average concentration. After sediment removal, a minimum thickness of ten inches of clean sand was placed in areas where samples exceeded the cleanup goals, to promote mixing and dilution of sediments and prevent ecological risk to benthic macroinvertebrates in the top six inches of habitat zone. Monitoring of the sediment and RCM will continue until no ecological exposure risks remain.

Detailed sampling results can be found in the June 21, 2013 *Final Report: NAPL and Sediment Removal Action for the Marinette Former Manufactured Gas Plant Site, Marinette, Wisconsin* authored by NRT on behalf of WPSC.

E.3.e. Site Contaminants of Concern (COCs)

EPA identified polycyclic aromatic hydrocarbons (PAHs), most notably chrysene, benzo(a)pyrene, benzo(b)fluoranthene, and naphthalene, and PVOCs, including benzene and ethylbenzene, as COCs at the Site. Based on historical investigations and results from the RI, the source of the PAH and PVOC contamination is the manufacturing of gas processes undertaken at the WPSC Marinette MGP operations from the 1900's through the 1960's. COCs spread from the MGP down to the Marinette River via a former logrun/slough.

E.3.f. Contaminant Levels by Specific Media

Table 1: COCs in Soil with Remediation Goals

Constituents of Concern	Minimum to Maximum Range in PPM	CR>1×10–6; HQ>1 in PPM
Ethylbenzene	ND-288	37
Benzo(a)pyrene	ND-534	2.11
Naphthalene	ND-1630	26

Notes: CR-Cancer Risk HQ-Hazard Quotient PPM-Parts Per Million ND-Non-Detect

Table 2: COCs in Groundwater with Remediation Goals

Contaminant of Concern	Minimum to Maximum Range in µg/L	PRG in µg/L	Basis for PRG
Benzene	ND-580	5	MCL and NR140
Ethylbenzene	ND-1,700	700	MCL and NR140
Benzo(a)pyrene	ND-80	0.2	MCL and NR140
Benzo(b)fluranthene	ND-45	0.2	NR140
Chrysene	ND-59	0.2	NR140
Naphthalene	ND-3,200	100	NR140

Notes: µg/L-micrograms per liter ND-Non-Detect MCL-Maximum Contaminant Level

E.3.g. Geochemical Results

Groundwater samples were evaluated for the geochemical parameters to determine whether conditions in the aquifers are favorable for natural attenuation of the COCs. Samples concluded that natural attenuation processes are occurring as supported by a reducing environment with anaerobic degradation occurring through methanogenesis within the groundwater contaminant plume.

Deeper, bedrock groundwater has not indicated exceedances of COCs.

E.4. Conceptual Site Model

A conceptual site model (CSM) was developed for WPSC Marinette MGP Site based on Site characteristics and results from the RI investigations. The CSM tells the story of how and where the PAH contamination moved and what impacts such movement may have had upon human health and the environment (Figure 4 and 5).

As described in the CSM, NAPL and PAHs are the primary contaminants of concern (COCs). Site data shows that exposure to PAHs will drive risks at the Site, and that the management of risks due to PAH exposure will also address risks associated with other non-PAH constituents.

The media of concern at the Site are soil and groundwater. PAH-contaminated soil and groundwater both can lead to PAH exposure to future Site workers. The targeted remediation areas at the Site are soil and groundwater exceeding human health risk criteria.

F. Current and Potential Future Site and Resource Uses

F.1. Current and Potential Future Land Uses

The land around the former MGP facility has been zoned for residential, commercial/industrial (including communications/utilities and governmental/institutional), and park district uses. According to the Marinette City Assessor's Public Assess website for Marinette, the former MGP facility is zoned as communications/utilities use. Most of the land surrounding the former MGP facility is zoned as heavy manufacturing or business district. Residential zoning can be found to the east/northeast across the street from the WWTP on the corner of Mann Street and Ludington Street. Additional residential zoning is located approximately a block away to the south and southeast along Main Street.

This zoning information was obtained through the Bay Lakes Regional Planning Commission GIS website and the August 3, 2009 city of Marinette zoning map.

F.2. Current and Potential Future Groundwater Uses

The groundwater below the Site is classified as a drinking water aquifer but is not currently in use as a drinking water source. The City provides potable water to the surrounding area from Lake Michigan. The use of groundwater as a future potential drinking water source is highly unlikely, and its use will be restricted as part of the selected remedy until RAOs are achieved.

G. Summary of Site Risks

The following section establishes the basis for taking action at the WPSC Marinette MGP Site and briefly summarizes the relevant portions of the Human Health Risk Assessment (HHRA) and Baseline Ecological Risk Assessment (BERA), both found as appendices in the 2013 RI Report.

G.1. Summary of the Human Health Risk Assessment (HHRA)

The HHRA was prepared to assess human health risks the Site contaminants would pose if no cleanup actions were taken. It provides the basis for taking action and identifies the contaminants and exposure pathways that need to be addressed by the remedial action. The HHRA is included as an appendix of the RI Report.

A four -step process is used for assessing Site-related human health risks:

- **Hazard identification** uses the analytical data collected to identify the COCs at the Site for each medium based on such factors as toxicity, frequency of occurrence, fate and transport of the COCs into the environment, concentration, mobility, persistence, and bioaccumulation.
- **Exposure assessment** evaluates the different exposure pathways through which people might be exposed to contaminants based on media-specific contaminant concentrations, the frequency and duration of these exposures, and the pathways by which humans are potentially exposed (e.g. dermal contact with contaminated soil or groundwater, etc.)
- **Toxicity assessment** determines the types of adverse health effects associated with chemical exposures and the relationship between magnitude of exposure (dose) and severity of adverse effects (response).
- **Risk characterization** summarizes and combines outputs of the exposure and toxicity assessments to provide a quantitative assessment of Site-related cancer risks and noncancer hazards. The risk characterization also identifies contamination with concentrations that exceed acceptable levels, identified in the NCP and EPA guidance as an excess lifetime cancer risk greater than 10^{-6} to 10^{-4} (1 in 1,000,000 to 1 in 10,000) or a noncancer Hazard Index (HI) greater than 1. Contaminants at these concentrations are considered COCs and are typically those that will require remediation at a site. This section includes a discussion of the uncertainties associated with these risks.

G.1.a. Hazard Identification

The HHRA identified COCs present in soil, groundwater, soil vapor, and river sediment at the Site. The data used in the HHRA by medium are summarized below:

- **Soil:** Soil data were used to perform evaluations related to human health only because the lack of ecological habitat in the upland area made an evaluation of wildlife receptors unnecessary. Soil data were segregated into surface and subsurface soils. Soils collected within the top 2ft of soil are referred to as surface soils and soils collected below 2 ft bgs are referred to as subsurface soils.
- **Groundwater:** Groundwater data from 2012-2013 were included for evaluation in the risk assessment. The groundwater data from all wells were used collectively to evaluate groundwater quality at the Site.
- **Soil vapor:** Four rounds of soil vapor samples were collected in August 2012, May 2013, April 2014 and August 2014.
- **River sediment:** The sediment data collected during the RI were used to perform an ecological assessment. No sediment data were evaluated for the human health risk assessment because all areas of potential exposure have been remediated under the 2012 NTCRA. The RI sediment data were considered of sufficient quality for risk assessment.
- **Surface water:** Seven surface water samples were collected from the Menominee River prior to the NTCRA. Prior to the sediment Removal Action that occurred in the Menominee River, surface water samples were collected to evaluate if contaminated sediments were impacting the water quality. The surface water quality was not found to pose a health concern to either human or ecological receptors based on screening assessments performed on these data; further, the sediment Removal Action would have improved the current water quality.

G.1.b. Exposure Assessment

Consistent with EPA risk assessment guidance (EPA 1989, 1991), the HHRA serves as a baseline and assumes no remediation or institutional controls to mitigate or remove hazardous substance releases. Cancer risks and noncancer HIs were calculated based on estimates of reasonable maximum exposures (RME) to describe the magnitude and range of exposures that might be incurred by receptor groups under current and future conditions at the Site. The RME is defined as the highest exposure that is reasonably expected to occur at a site. Decisions are based on the RME, consistent with the NCP.

G.1.b.i. Conceptual Site Model

The CSM describes potential contaminant sources, transport mechanisms, potentially exposed populations, exposure pathways, and routes of exposure. The CSMs are presented as Figures 4 and 5 on pages 2-20 and 2-21.

G.1.b.ii. Identification of Potentially Exposed Populations

Populations were identified that could be exposed to contaminants through a variety of activities consistent with current and potential future uses of the Site. The HHRA evaluated potential exposures of human receptors to COCs in soil, groundwater, and soil gas. Risks and hazards were characterized on an exposure area-specific basis for residents and commercial/industrial workers based on current and reasonably anticipated future land use.

Risks for future industrial or commercial workers include:

- Incidental ingestion of soil (surface and subsurface).
- Dermal contact with soil (surface and subsurface) as a result of soil disturbance.

- Inhalation of vapors as a result of vapor intrusion from visual observations of MGP residuals and groundwater into commercial/industrial buildings on the Site.
- Ingestion of groundwater.
- Dermal contact with groundwater.

Risks for construction workers include:

- Incidental ingestion of soil (surface and total) and groundwater associated with excavation activities.
- Dermal contact with soil and groundwater associated with excavation activities.
- Inhalation of vapors and dust derived from soil and groundwater associated with excavation activities.

Risks for recreational visitors include:

- Incidental ingestion of surface soil.
- Dermal contact with surface soil

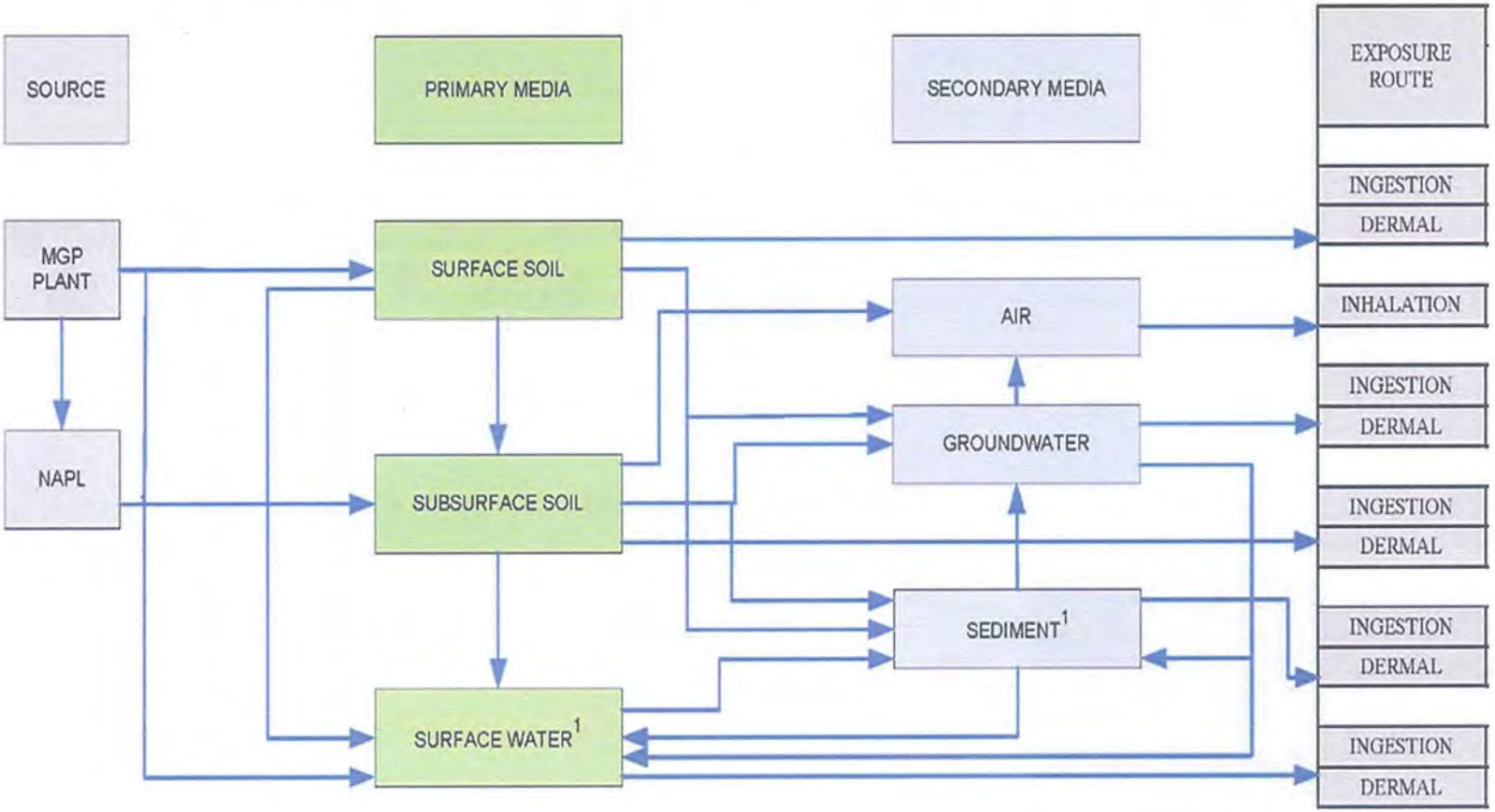
Risks for residents, under a hypothetical future land-use scenario, including the unlikely possibility of significant disturbance of subsurface soils, include:

- Incidental ingestion of soil (surface and subsurface)
- Dermal contact with soil (surface and subsurface) as a result of soil disturbance
- Inhalation of vapors and dust as a result of soil disturbance
- Inhalation of vapors as a result of vapor intrusion from subsurface soils and
- groundwater into a future residential building constructed on the Site
- Ingestion of groundwater
- Dermal contact with groundwater

G.1.c. Toxicity Assessment

The toxicity assessment determines whether exposure to COCs may result in adverse health effects in humans and the relationship between the magnitude of exposure (dose) and incidence and/or severity of adverse effects (response). For risk assessment purposes, chemicals are generally separated into categories based on whether a chemical exhibits carcinogenic or noncarcinogenic health effects. As appropriate, a chemical may be evaluated separately for both effects. Noncancer effects are evaluated using a reference dose (RfD), which is the dose below which adverse health effects are not expected. Carcinogenic effects are assessed using the cancer slope factor (SF), which is typically expressed in units of mg/kg-day. The SF represents an upper bound estimate on the increased cancer risk. SFs are generally accompanied by a weight of evidence descriptor, which expresses the confidence as to whether a specific chemical is known or suspected to cause cancer in humans.

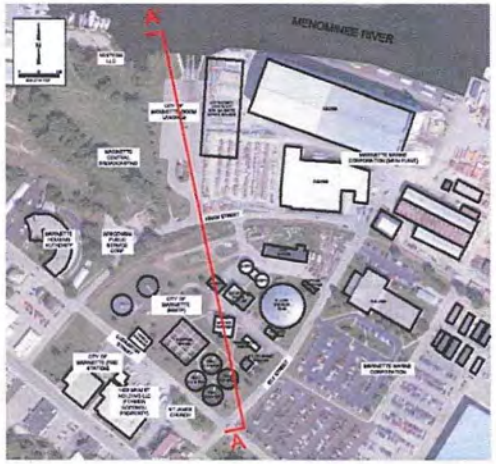
Figure 4. Conceptual Site Model Chart for the WPSC Marinette Former MGP Site

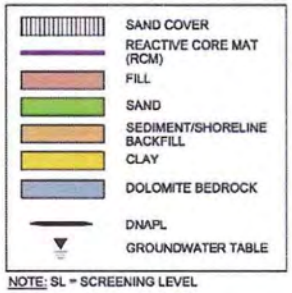


GENERAL NOTES:
This site-specific Conceptual Site Model was developed based on the Generalized Conceptual Site Model Revision 0 (August 5, 2007) and observations made during the July 17, 2009 site reconnaissance, and the results of the sediment remediation and remedial investigation.

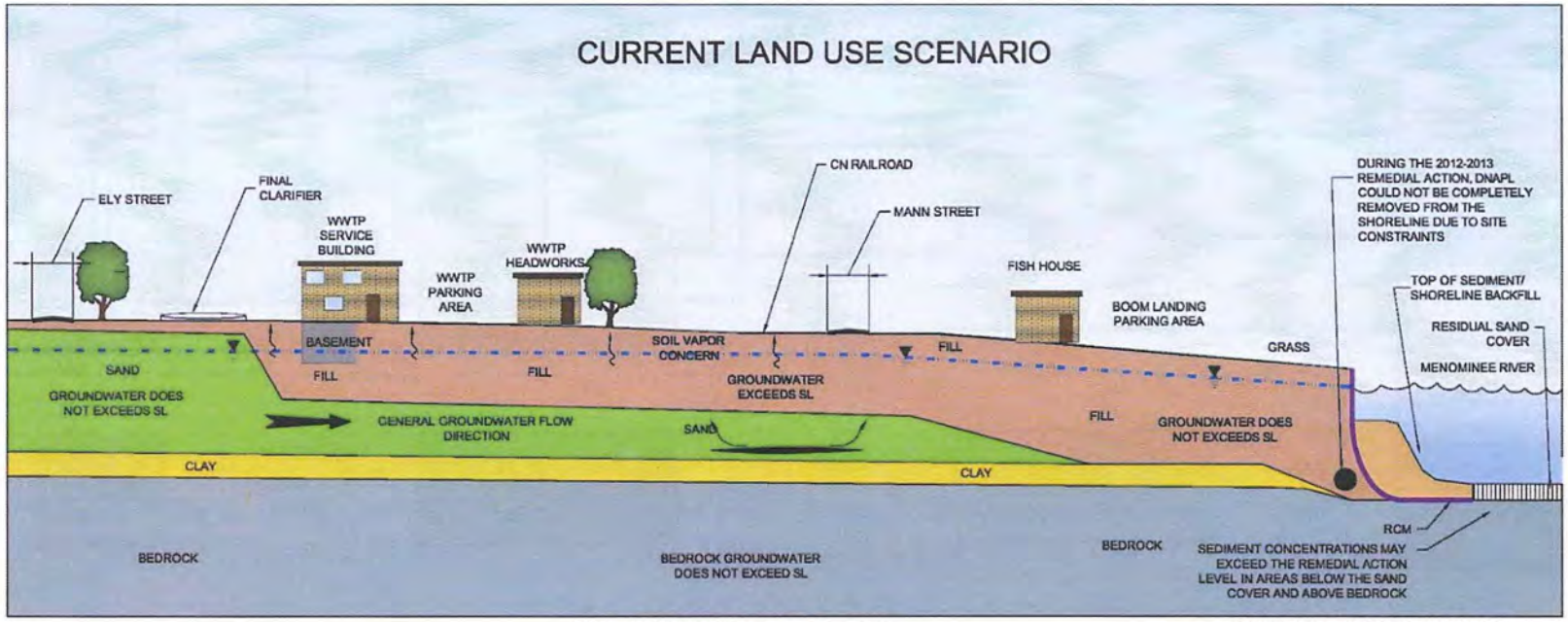
[1] A qualitative exposure assessment found this pathway to be incomplete or insignificant under current and future scenarios. Refer to Section 2.3.4 Potential Exposure to Surface Water and Sediment of the BLRA for the details of this assessment.

Figure 5 Visual Conceptual Site Model





NOTE: SL = SCREENING LEVEL



SECTION A-A'

GRAPHICAL REPRESENTATION WITH VERTICAL EXAGGERATION NOT TO SCALE

G.1.c.i.Cancer Assessment

Potential cancer effects are expressed as the probability that an individual will develop cancer over a lifetime based on the exposure assumptions described in Section G.1.b. The cancer SF is a plausible upper bound estimate of carcinogenic potency used to calculate cancer risk from exposure to carcinogens by relating estimates of lifetime average chemical intake to incremental probability of an individual developing cancer over a lifetime.

For carcinogenic compounds, risk is given as the incremental probability of an individual developing cancer over a lifetime as a result of exposure to a carcinogen. Values are expressed as "excess lifetime cancer risk" (ELCR) because the risk would be in addition to the risk of developing cancer from other causes such as smoking or exposure to too much sun. ELCRs are often expressed in scientific notation (e.g., $1x10^{-6}$); an ELCR of $1x10^{-6}$ indicates that an individual experiencing the reasonable maximum chemical exposure estimate has an extra 1 in 1 million chance of developing cancer as a result of site-related exposure. The chance of an individual developing cancer from all other causes has been estimated to be as high as 1 in 3. EPA's target risk range for site-related exposures is $1x10^{-4}$ to $1x10^{-6}$ ELCR.

ELCR is calculated using the following equation: ELCR = CDI x SF

where: ELCR = a unitless probability (e.g., 2×10^{-5})
CDI = chronic daily chemical intake averaged over 70 years (mg/kg-day)
SF = cancer slope factor, expressed as $(mg/kg\text{-}day)^{-1}$.

A COC is considered to present a current and/or future potential unacceptable risk if the calculated ELCR is greater than EPA's target risk range.

G.1.c.ii. Noncancer Assessment

Noncancer health effects were evaluated using RfDs. A RfD is an estimate of a daily oral exposure for a given duration to the human population (including susceptible subgroups) that is likely to be without an appreciable risk of adverse health effects over a lifetime. Chronic RfDs are specifically developed to be protective against long-term exposure to COCs.

For non-carcinogens, EPA calculates a hazard quotient (HQ) for each COC. The HQ is the ratio of the estimated exposure level to a chemical compound over a specified period of time to a RfD of the same substance that may cause deleterious health effects over the same exposure period. The potential for non-carcinogenic effects is evaluated by comparing an exposure level over a specified time period (e.g., lifetime) with a RfD derived for a similar exposure period. An RfD represents a level that an individual may be exposed to that is not expected to cause any deleterious effect. The ratio of exposure to toxicity is called a HQ. An HQ>1 indicates that site-related exposures may present a risk to human health.

The HQ is calculated as follows: HQ = CDI/RfD

where: CDI = Chronic daily intake
RfD = reference dose

CDI and RfD are expressed in the same units and represent the same exposure period (i.e., chronic, sub-chronic, or short-term).

G.1.d. Risk Characterization

Risk characterization integrates the information from the exposure assessment and toxicity assessment, using a combination of qualitative and quantitative information. Risk characterization involves estimating the magnitude of the potential adverse health effects associated with the COCs. It also involves making judgments about the nature of the human health threat to the defined receptor populations. The risk characterization combines the results of the dose-response (toxicity assessment) and exposure assessment to calculate cancer risks and noncancer health hazards. In accordance with EPA's guidelines, this assessment assumes that the effects of all contaminants are additive through a specific pathway within an exposure scenario.

For carcinogens, risks are generally expressed as the incremental probability of an individual developing cancer over a lifetime as a result of exposure to the carcinogen. Excess lifetime cancer risk (ELCR, a unitless probability of an individual's developing cancer) is calculated by multiplying the chronic daily intake averaged over 70 years (mg/kg-day) and the SF (per mg/kg-day). These risks are probabilities that usually are expressed in scientific notation (e.g.1 x 10^{-6}). An excess lifetime cancer risk of 1 x 10^{-6} indicates a probability that the RME individual has a 1 in 1,000,000 chance of developing cancer as a result of site-related exposure. This is referred to as an "excess lifetime cancer risk" because it would be in addition to the risks of cancer individuals face from other exposures. The upper-bound excess lifetime cancer risks derived in this assessment are compared to the risk range of 10^{-4} to 10^{-6} established in the NCP.

EPA's goal of protection for cancer risk is 10^{-6}, and risks greater than 10^{-4} typically will require remedial action. The potential for noncancer health effects is estimated by comparing the average daily dose of a chemical for adult, adolescent, and child with the RfD for the specific route of exposure (e.g., oral). The ratio of the intake (average daily dose, or ADD) to reference dose (ADD/RfD) for an individual chemical is the HQ. When an RfD is available for the chemical, these ratios are calculated for each chemical that elicits a noncancer health effect. Typically, chemical-specific HQs are summed to calculate an HI value for each exposure pathway. EPA's goal of protection for noncancer health effects is an HI equal to 1. When the HI exceeds 1, there may be a concern for health effects. This approach can result in a situation where HI values exceed 1 even though no chemical-specific HQs exceed 1 (i.e., adverse systemic health effects would be expected to occur only if the receptor were exposed to several contaminants simultaneously). In this case, chemicals are segregated by similar effect on a target organ, and a separate HI value for each effect/target organ is calculated. If any of the separate HI values exceed 1, adverse, noncancer health effects are possible. It is important to note, however, that an HI exceeding 1 does not predict a specific disease.

G.2. Conclusions from the HHRA

The likelihood of any kind of cancer resulting from exposure to carcinogens at a Superfund site is generally expressed as an upper bound incremental probability, such as a "1 in 10,000 chance" (expressed as 1 x 10^{-4}). In other words, for every 10,000 people exposed to the site contaminants under reasonable maximum exposure conditions, one extra cancer may occur as a result of site-related exposure.

This is referred to as an "excess lifetime cancer risk" because it would be in addition to the risk of cancer individuals face from other causes such as smoking or too much sun. The risk of cancer from other causes has been estimated to be as high as one in three. The potential for non-cancer health effects is evaluated by comparing an exposure level over a specified time period (such as a lifetime) with a "RfD" derived for a similar exposure period. A RfD represents a level that is not expected to cause any harmful effect. The ratio of exposure to toxicity is called a HQ. An HQ < 1 indicates that the dose from an individual contaminant is less than the RfD, so non-cancer health effects are unlikely. The HI is generated by adding the HQs for all COCs that affect the same target organ (such as the liver). An HI < 1 indicates that, based on the sum of all HQs from different contaminants and exposure routes, non-cancer health effects from all contaminants are unlikely. An HI > 1 indicates that site-related exposures may present a risk to human health. EPA's acceptable risk range is defined as a cancer risk range of 1×10^{-6} to 1×10^{-4} and an HI < 1. Generally, remedial action at a site is warranted if cancer risks exceed 1×10^{-4} and/or if non-cancer hazards exceed an HI of 1.

The HHRA for the Site presented estimated cancer risks and non-cancer hazards for residential and recreational receptors exposed to surface and subsurface soils, groundwater and soil vapor, and sediments. Sediment risks were addressed through the 2012 NTCRA and detailed risk analysis can be found in the 2013 NTCRA Completion Report.

Surface soils in Boom Landing and the WWTP and surrounding properties were associated with estimated cancer risks above the risk management range under a residential scenario, but within the risk management range for an industrial scenario. Under current conditions, recreational visitors would be unlikely to be exposed to surface soils in Boom Landing, because the unpaved area is small, and the soils in this area are covered with a manicured lawn. The presence of pavement, buildings, and manicured landscaping in the WWTP and surrounding properties also results in very low potential for exposure to chemicals in soil under present conditions. If some degree of surface soil exposure were assumed for a recreational user under current conditions, the exposure frequency for a recreational visitor would be expected to be at least an order of magnitude less than that of a hypothetical resident (i.e., less than 35 days/year rather than 350 days/year), which would correspond to cancer risk estimates within the risk management range. For a construction worker, risks are anticipated to be within the risk management range, given that estimated cancer risks for the industrial worker scenario were within the risk management range, and the potential level of chemical exposure is anticipated to be similar for these two potential receptors based on Site-specific conditions. No observations of MGP-residuals in the surface soils (i.e., less than 2 ft) were documented in the RI that would present a special condition for construction workers.

Subsurface soils in Boom Landing and the WWTP and surrounding properties do not currently pose a risk to human receptors, because they are not available for contact and buildings are not present near the subsurface soil contamination. However, estimated potential risks would be above the risk management range if future construction disturbed the soil sufficiently to allow exposure similar to either a residential or a generic industrial worker scenario. Considering the results for the industrial worker and residential scenario, there is a potential for risks to construction workers or recreational visitors above the risk management range as well.

Direct exposure to MGP residuals, which have been observed in the subsurface soils in this area, would also pose a potential risk above the risk management range.

Groundwater is not currently used as drinking water within the City of Marinette, and there are no known current users of groundwater for any other purpose in proximity to the Site. Based on the groundwater results, concentrations would not meet the legally enforceable standards for drinking water. There were numerous exceedances of the drinking-water standards and tap water regional screening levels, including benzene, ethylbenzene, xylenes, PAHs, iron, and manganese. Although the groundwater is not used as the drinking water source, the NCP's expectation is that groundwater will be restored to beneficial use. The groundwater is classified by the State of Wisconsin as a Class II drinking water aquifer; therefore, the Site groundwater needs to be restored to the Safe Drinking Water Act maximum contaminant limits (MCLs) for all contaminants of concern.

If future construction in the area would result in workers having direct physical contact with groundwater or inhaling associated vapors in excavations at or below the water table, there would be some potential for exposure to the contaminated groundwater. However, contact with groundwater is likely to be infrequent, because of safety considerations when entering excavations with standing water that are unrelated to the potential presence of chemical contamination in that groundwater. In addition, groundwater would not be encountered until a minimum of 2 ft bgs near the Menominee River, with depths more commonly ranging from 4–10 ft bgs. Intrusive work occurring at depths less than this would not result in groundwater exposure. Based on results of the RI, groundwater in specific areas of the Site may be contaminated with MGP residuals (i.e., Boom Landing and focused areas within the WWTP). If MGP residuals were encountered in an excavation by a construction worker, exposure to the groundwater would represent risks above the risk management range, due to the potential for direct contact with the MGP residuals and the inhalation of chemical vapors formed due to the presence of the MGP residuals.

Soil vapor data were screened against Vapor Intrusion Screening Levels (VISLs) obtained using the EPA's vapor intrusion screening level calculator (U.S. EPA 2014b).

- For soil vapor samples taken beneath the Vehicle Storage building in the WWTP, the majority of results were non-detect, and all chemical concentrations were below the industrial worker VISLs, and thus associated with risks below the risk management range. All but one sample was also below residential VISLs, and the estimated risk for a hypothetical residential scenario for this one sample was at the low end of the risk management range.
- For soil vapor samples collected directly beneath the Service Building, all results were below industrial VISLs, and thus associated with risks below the risk management range. The estimated cancer risks for soil gas samples under a hypothetical residential scenario were within or below the risk management range. One sample had a noncancer hazard (2) above the risk management criterion. For exterior soil gas samples near the Service Building, estimated risks for either a hypothetical future industrial building or a residence were within the risk management range.

- For soil vapor samples collected in Boom Landing where inhabited buildings do not exist at present, estimated risks for either a hypothetical future industrial building or residence were estimated to be within the EPA's risk management range.
- For soil vapor samples collected in the WWTP area in areas where no buildings currently are present, estimated risks for either a hypothetical future industrial building or residence were within the risk management range except for a single location (SG05). Considering, collectively, the results of the soil vapor sampling that was performed on-site, if construction workers performed maintenance or redevelopment activities involving excavations, the air quality in the excavation would not be expected to pose a health concern due to chemical concentrations in air. Based on the low concentrations of COCs in soil vapors other than in an isolated location in the WWTP area, the concentrations of chemicals in air inside an excavation would be expected to be low as well, considering the amount of dilution that would occur when soil vapors are mixed with ambient air, as long as MGP residuals are not encountered. As pointed out earlier in this report, if MGP residuals are encountered in excavations, soil vapor concentrations would potentially result in risks above the risk management range.

The following conclusions were made in the HHRA, and the summary of human health risks by medium and area can be found below in Table 3.

- Soils: Surface soils in Boom Landing and WWTP zones were estimated to be associated with risks within the risk management range for an industrial worker, a construction worker, or for the limited exposure of a recreational visitor. Estimated risks would be above the risk management range under a hypothetical future residential scenario. Subsurface soils do not currently pose a risk to human receptors because they are not available for contact; however, under the assumption of potential future exposure to these soils, estimated risks are above the risk management range for all receptors.
- Groundwater: Although the groundwater at the Site is not a drinking water source due to exceedances of the drinking water standards, it is deemed a Class II drinking water aquifer and must be cleaned up to Safe Drinking Water Act standards. If future construction in the area would result in workers having direct physical contact with groundwater or associated vapors in excavations at or below the water table, there would be potential risks above the risk management range due to the presence of MGP residuals.
- Soil vapor: For soil vapor samples collected in Boom Landing and the WWTP zones where no buildings currently are present, estimated risks for either a hypothetical future industrial building or residence were within the risk management range except for a single location within the WWTP zone.
- Sediment: The human health risks associated with exposure to contaminated sediments was addressed during the 2012 NTCRA.
- Surface Water: No human-health risks associated with surface water.

The response action selected in this Record of Decision is necessary to protect the public health or welfare or the environment from actual or threatened releases of hazardous substances and pollutants or contaminants into the environment.

Table 3. Summary of Human Health Risks by Medium and Area

Surface Soil (0-2 ft)	Residential	Industrial
Boom Landing	Cancer risks above risk management range with any statistic used (2E-4 using mean, and 4E-4 with max), driven by BaP, with no noncarcinogenic chemicals screening in.	Cancer risks within risk management range with any statistic used (9E-6 using mean, and 2E-5 with max), driven by BaP, with no noncarcinogenic chemicals screening in.
WWTP	Cancer risks above risk management range with any statistic used (2E-4 using mean, and 6E-4 with max), driven by BaP, with noncancer hazards below the criterion.	Cancer risks within risk management range with any statistic used (1E-5 using mean, and 3E-5 with max), driven by BaP, with noncancer hazards below the criterion.
Subsurface Soil (2-16 ft)	**Residential**	**Industrial**
Boom Landing	Cancer risks above risk management range with any statistic used (2E-3 using mean, and 1E-2 with max), driven by BaP, with noncarcinogenic hazards above risk management criterion (2 using mean and 8 using maximum, driven by naphthalene).	Cancer risks near to or above risk management range (1E-4 using mean, and 7E-4 using max) driven by BaP, with noncarcinogenic hazards at the risk management criterion for the maximum (1, driven by naphthalene) but below the risk management criterion for the mean.
WWTP	Cancer risks above risk management range with any statistic used (5E-3 using mean, and 3E-2 with max), driven by BaP, with noncarcinogenic hazards at or above risk management criterion (1 using mean and 15 using maximum, driven by naphthalene).	Cancer risks above risk management range with any statistic used (2E-4 using mean, and 2E-3 with max), driven by BaP, with noncarcinogenic hazards above risk management criterion for the maximum (3, driven by naphthalene), but below the criterion for the mean.
Groundwater	**Residential**	**Industrial**
All Wells	Multiple exceedances of drinking water standards.	Multiple exceedances of drinking water standards. Direct contact with groundwater in excavations has the potential for risks above the risk management range due to the presence of MGP residuals in some wells.

Soil Vapor Sub-surface Samples	Residential	Industrial
Boom Landing	Cancer risks within risk management range (max 6E-5), with risks driven by benzene and naphthalene, and noncancer hazards at cutoff (1), driven by naphthalene.	Cancer risks within risk management range (max 1E-5), with risks driven by benzene, and noncancer hazards below the criterion.
WWTP Service Building	All risks within or below the risk management range.	All risks within or below the risk management range.
Headworks Building	All risks within or below the risk management range.	No COCs identified.
Other Exterior	One location (SG05, 6.5–7 ft) is associated with cancer risks (up to 8E-3, driven by benzene) and noncancer hazards (up to 200, driven by naphthalene) above risk management range, but all other samples are within or below risk management range.	One location (SG05, 6.5–7 ft) is associated with cancer risks (up to 2E-3, driven by benzene) and noncancer hazards (up to 40, driven by naphthalene) above risk management range, but all other samples are within or below risk management range.
Soil Vapor Sub-slab Samples	**Residential**	**Industrial**
Boom Landing	No inhabited buildings present.	No inhabited buildings present.
WWTP Vehicle Building	All risks within or below the risk management range.	No COCs identified.
Service Building	All cancer risks were within or below the risk management range. One sample had a concentration of 1,2,4-trimethylbenzene associated with a noncancer hazard above the cutoff (2).	No COCs identified.
Sediments—Wadeable areas have been remediated.		
Surface Water—After removal action, no MGP-related impacts to the river are expected.		

NOTES: Yellow highlighting indicates that a cancer risk is at or above 1×10–4 or a noncancer hazard index is above 1. The risk management range for cancer risks is 1×10–6 to 1×10–4. The risk management criterion for noncancer hazards is 1.
BaP – benzo[a]pyrene COC – Contaminant of Concern
See Appendix C for further information

G.3. Summary of the Baseline Ecological Risk Assessment (BERA)

As part of the RI, NRT prepared a BERA that identified terrestrial and aquatic receptors and exposure pathways.

The BERA was conducted to evaluate potential adverse effects aquatic ecological receptors associated with PAH exposures in surface water and sediment of the Menominee River. The ecological screening evaluation of the Menominee River sediments collected during the RI showed that total PAH concentrations were elevated above the generic screening level benchmark or probable effects cause (PEC) of 22.8 mg/kg.

The PEC was used as a conservative screening tool. There were also isolated exceedances of metals above their PEC, but these exceedances did not appear to be related to the former MGP operations as they were, for the most part, in different locations than the total PAH exceedances. There was a focused area of sediment contamination near the boat ramp and the marina that was above the generic total PAH PEC. During the RI, sediment samples were also collected to perform Site-specific toxicity testing to develop total PAH concentration limits using testing methods and statistical evaluations similar to those performed at other WPSC Sites (i.e., Campmarina, Manitowoc) that would be protective of ecological receptors.

Prior to completion of the RI, WPSC decided to perform a non-time critical removal action of MGP-affected sediments and near-shore NAPL. The decision was made to use the total PAH PEC as the remedial action level to define the area of sediments to be removed. The remediation successfully removed most sediments with concentrations above the remedial action level.

Sediments with total PAH concentrations above the remedial action level remained at three isolated locations outside of the footprint of the remediation. Two of these locations had concentration only slightly above the remedial action level and the third had an anomalously high concentration of total PAHs, as indicated by the confirmation sample that had a total PAH concentration below the remedial action level. Site-specific sediment toxicity testing, described below, yielded a total PAH concentration limit that would be protective of sensitive ecological receptors, which was higher than the conservative remedial action level of 22.8 mg/kg that was used to guide the limits of the sediment remediation. Because the Site-specific sediment toxicity testing was not used to refine the total PAH concentration limit for guiding the remediation, a larger area of sediments was removed than would have been required if the sediment toxicity results had been considered.

The results of the Site-specific sediment toxicity testing showed that the lowest concentration of total PAHs that resulted in a statistically significant decrease in survival of the test organism (the amphipod Hyalella azteca) was 61 mg/kg, which is well above the remedial action level of 22.8 mg/kg. Based on further statistical analyses, this concentration limit was selected as the upper limit of the no significant risk zone. With the exception of the anomalously high sediment sample, the total PAH sediment concentrations remaining in the river after the remediation are all below this concentration limit of 61 mg/kg. Thus, the sediments remaining in the Menominee River do not pose a risk to sensitive aquatic ecological receptors (e.g., benthic invertebrates).

Some areas of the river where pockets of sediment within the undulating bedrock surface contained total PAHs above the remedial action level of 22.8 mg/kg that could not be completely removed were covered with a minimum of ten inches of sand to manage dredge residuals. Total PAH concentrations in and just below the sand have been sampled as part of a post-remediation monitoring program. Based on the results of four rounds of post-remediation monitoring sampling, the concentrations of total PAHs in the surface sand cover material are below the remedial action level and do not pose a risk to sensitive ecological receptors, such as benthic invertebrates. Sand cover sampling will resume to inform the five-year review.

Evaluation of the ecological risks at the Site concluded that the upland area does not support habitat for ecological receptors due to the developed nature of the Site, consistent with the commercial/industrial zoning of the land. The BERA also concluded that for aquatic environment, including sediment and surface water COC concentrations in the Menominee River, risks exceeded ecological benchmarks, and required a NTCRA to address risks. The NTCRA remediated those risks.

G.4. Basis for Taking Action

Under current conditions, the Site does not appear to pose health concerns to human receptors based on potential exposures to contaminated soil, surface water, or sediment. However, under hypothetical future uses, exposure to groundwater and subsurface soil present unacceptable risks.

It is EPA's current judgment that the selected remedy identified in this ROD is necessary to protect public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment.

H. Remedial Action Objectives

Remedial action objectives (RAOs) provide a general description of what the cleanup will accomplish, and typically serve as the design basis for the remedial alternatives which will be presented below. RAOs for the Site were developed based on COCs, pathways, receptors, and an acceptable constituent level (risk-based concentrations, PRG, chemical-specific ARAR, or to-be-considered criteria) for each medium assuming future residential use of the Site. RAOs provide the basis to evaluate the remedial alternatives, and the following address current and reasonably anticipated future land use:

- **Soil/Soil Vapor:**
  - **RAO-1:** Prevent human exposure, including dermal contact and incidental ingestion of particulates and vapor to NAPL-saturated soil and subsurface soil containing MGP-related contaminants greater than PRGs.
- **Groundwater:**
  - **RAO-2:** Prevent human exposure including dermal contact, ingestion, and inhalation (as a result of vapor intrusion) of groundwater containing MGP residuals exceeding the PRGs.
  - **RAO-3:** Restore groundwater to PRGs for MGP-related contaminants within a reasonable timeframe.
  - **RAO-4:** Minimize, to the extent practicable, the potential for migration of groundwater with MGP-related constituents above the PRGs to surface water.
- **Sediment**
  - **RAO-5:** Demonstrate the RCM remains effective at preventing NAPL from migrating into the Menominee River and that at least six inches of clean sand remains over areas with remaining MGP-residuals.
  - **NTCRA RAO:** Remove NAPL and PAH-contaminated sediment that have the potential to affect human health and ecological receptors. Was satisfied to the extent practicable as part of the NTCRA activities.

H.1. Remediation Goals

Preliminary Remediation Goals (PRGs) are risk-based or ARAR-based chemical-specific concentrations that help further define the RAOs. PRGs are considered "preliminary" remediation goals until a remedy is selected in a ROD. The ROD establishes the final remedial goals and/or cleanup levels. Remediation Goals are also used to define the extent of contaminated media requiring remedial action, and are the targets for the analysis and selection of long-term remedial goals.

The HHRA developed a series of risk-based concentrations (RBCs) for total PAHs intended to be protective of future workers. The RBCs are calculated, chemical-specific concentrations below which no significant health effects are anticipated for a receptor. For human receptors, the site RBCs correspond to a target risk for carcinogenic effects of 1×10^{-6} and a target HI of 1 for non-carcinogenic effects. For ecological receptors, RBCs correspond to a target HQ of 1. RBCs for ecological receptors represent a risk range based on "No Observed Adverse Effects Level" and "Lowest Observed Adverse Effects Level" risk estimates for each receptor group.

The proposed Remediation Goals (RGs) for soil are generally based on EPA default exposure parameters and factors representing reasonable maximum exposure conditions for long-term/chronic exposures for cancer risk of 10^{-6} with a corresponding hazard quotient of 1 under a hypothetical residential and industrial exposure scenario. Remediation to residential RGs will result in unrestricted use and unrestricted exposures. Remediation to industrial RGs will be protective, if there are corresponding controls to prevent residential land use, unless additional remedial action is undertaken. As specified by Wisconsin DNR's Update to RR-890 and RCL Spreadsheet (Wisconsin DNR, June 2014), certain EPA default exposure parameters were modified to match current Wisconsin DNR requirements.

During implementation of a remedy, flexibility will be provided to modify the RGs by conducting a post-remedy risk assessment following the risk assessment framework as negotiated in the 2006 Order on Consent. If the post-remedy risk assessment concludes cumulative site risk is below the target cancer risk and noncancerous hazard index for the targeted exposure scenario, then no additional remedial action will be required.

Groundwater Remediation Goals

EPA Tap-Water regional screening levels are a screening tool and are not appropriate or enforceable cleanup levels. Therefore, the selected groundwater RGs will be based on enforceable federal or state groundwater standards. For groundwater at the site, the RGs will be the more conservative of Wisconsin NR 140 Groundwater Enforcement Standard (NR 140) or the National Primary Drinking Water Regulations Maximum Contaminant Level as presented in the Multi-Site Risk Assessment Framework Addendum Revision 3 (Exponent, July 2014, found in the AR).

I. Description of Alternatives

Three alternatives were developed and evaluated for addressing the current and potential risks to human health or the environment. Detailed information about the remedial alternatives are provided in the FS Report (NRT 2017).

CERCLA mandates that remedial actions must be protective of human health and the environment, be cost-effective, and use permanent solutions and alternative treatment technologies or resource recovery alternatives to the maximum extent practicable. Section 121(b)(1) also establishes a preference for remedial actions which employ, as a principal element, treatment to permanently and significantly reduce the volume, toxicity, or mobility of the hazardous substances, pollutants, and contaminants at a Site. CERCLA § 121(d), 42 U.S.C. § 9621(d), further specifies that a remedial action must require a level or standard of control of the hazardous substances, pollutants, and contaminants, which at least attains ARARs under federal and state laws, unless a waiver can be justified pursuant to CERCLA § 121(d)(4), 42 U.S.C. § 9621(d)(4).

Alternative 1 – No Further Action
The "No Further Action" alternative is required under CERCLA, and it serves as a baseline comparison with other alternatives. This alternative entails no remedial action at the Site and does not include remediation or monitoring to minimize potential exposures to media and associated COCs present at the Site. $50,000 in costs were assumed for this alternative for the Five-Year Review process.

Capital Costs:	$0
Periodic Costs:	$50,000
Present Value:	$50,000
Construction Duration:	0 years

Alternative 2 – Excavation and Off-site Disposal at Boom Landing Zone; Horizontal Engineered Barriers at Boom Landing and WWTP Zones; In-situ Treatment of Groundwater, Sediment Monitoring; and ICs

Alternative 2 will consist of excavation and off-site disposal of accessible source material located within the Boom Landing Zone, installation of horizontal engineered barriers over surficial soil that exceeds PRGs, in-situ treatment of affected groundwater, effectiveness monitoring of the existing RCM and residual sand cover and implementation of institutional controls to manage remaining potential soil, groundwater, soil gas, and sediment risks.

Capital Costs:	$6,040,000
Periodic Costs:	$830,000
Present Value:	$6,870,000
Construction Duration:	three to six months

Source material was identified between 6-11 ft bgs over 1 acre and between 6-17 ft bgs over approximately 0.4 acres.

<u>Presumptive major elements of source material excavation include:</u>

- Completing pre-design investigations to further define horizontal and vertical extent of excavation and provide waste characterization sampling.
- Obtain access agreements for the Boom Landing Zone and demolition/removal of the parking lot, fish house, utilities and existing concrete and asphalt pavements.
- Install temporary shoring, as necessary, to support deeper excavations.

- Install temporary dewatering system to lower the water table within the excavation footprint.
- Excavating non-affected overburden soil and stockpiling on-site for use as post-excavation backfill.
- Excavating MGP-source material and transporting to a Subtitle D landfill.
- Backfilling excavation to surrounding grades with granular backfill and stockpiled overburden material
- Restoring the Site to previous conditions.

Presumptive major elements of the horizontal engineered surface barrier at Boom Landing and WWTP zones:

- Pre-design activities including investigations and obtaining access agreements.
- Monitoring and maintaining existing surface barriers that currently mitigate potential exposure to surficial soil containing COCs above commercial PRGs.
- Install barriers in locations not currently limited by existing barriers:
    - Excavate top two feet of affected soil, backfill excavation with 18 inches of clean fill and 6 inches of either clean topsoil, gravel, or asphalt.

A total of 242,000 ft^2 of barriers will exist on-site after implementation of the remedy. Currently, there are 131,000 ft^2 of existing barrier to maintain and 111,000 ft^2 of barriers would be installed.

Presumptive major elements of in-situ groundwater treatment:

- Performing a pre-design investigation to further define horizontal and vertical extent of affected groundwater and collecting samples for bench-scale testing.
- Performing bench-scale testing of Site soils and groundwater with varying types and percentages of reagents to determine the most effective oxidant to address COCs in groundwater and overcome the natural soil oxidant demand.
- One-time placement of oxidant into the exposed saturated zone resulting from excavation of Boom Landing Zone source area. It is estimated that the approximately 12 pounds of oxidant per square yard of excavation bottom will be required, resulting in an estimated 25,000 pounds of oxidant in the Boom Landing Zone.
- Installation of permanent injection wells using direct push technology in the WWTP Zone. Injection wells are anticipated to be constructed using Schedule 80 chlorinated polyvinyl chloride and will be installed in a transect pattern within the delineated benzene and naphthalene plume. This will result in approximately 50 injection points. Due to the relatively low concentration of benzo(a)pyrene in recent groundwater sampling events (plume centerline well average of 3.2 µ/L compared to the PRG of 0.2 µ/L), injections are not warranted and natural attenuation processes will be relied upon to achieve PRGs.
- Installation of permanent vapor extraction wells using direct-push technology. Approximately 15 vapor extraction wells are anticipated to be constructed using Schedule 80 chlorinated polyvinyl chloride throughout the treatment area.
- Injection of catalyzed hydrogen peroxide solution, matching the target concentration determined during the bench scale task. For FS-level cost estimating purposes, it is estimated that approximately 400,000 pounds of 34% hydrogen peroxide solution will be required to fully remediate the groundwater plume over an estimated two injections events.

Injection events will be spaced at approximately 2 years to allow for completion of quarterly groundwater sampling to highlight areas where addition oxidant injection is required.

- Frequent monitoring of subsurface soil, groundwater, and vapor to assess oxidant performance and provide information to guide modifications to injection procedures.
- Injection well abandonment and restoration of Site to surrounding grades.

It is anticipated that injection and monitoring activities will continue for approximately five years to reduce COCs to the selected PRGs.

Presumptive major elements of sediment monitoring:

- Maintaining the 19,500 ft^2 of RCM and perform sheen monitoring to evaluate function
- Monitor the 160CY of dredge inventory that remained after the NTCRA to ensure at least six inches of clean sand remain over those areas with MGP-residuals remaining, and that the 0-6-inch zone remains below RALs.

Presumptive major elements of Institutional Controls (ICs):

- Delineate MGP-COCs on affected parcels to residential PRGs.
- Use Wisconsin DNR's Geographic Information System (GIS) Registry to implement ICs.
- Apply alternate continuing obligation mechanisms including deed restrictions.

Approximately 15 acres will be subject to restrictions including:

- 1.2 acres owned by Canadian National Railroad-railroad
- 3.8 acres owned by City of Marinette-Boom Landing
- 1.0 acres owned by City of Marinette-Rights-of-Way
- 0.5 acres owned by WPSC-storage
- 8.6 acres owned by City of Marinette-WWTP-waste water treatment and public works

ICs will place the following restrictions for:

- **Soil**-Any subsurface activity must be conducted in accordance with a Soil Management Plan, and in some instances a Maintenance Plan, to ensure proper management of subsurface soil disturbed through future Site development, utility repairs, and other intrusive activities.
- **Soil Gas/Vapor Intrusion**- Vapor intrusion risks must be reassessed should any of the following conditions be satisfied:
    - Modification of land use;
    - Construction of a new buildings
    - Modification to existing buildings that may negatively affect the vapor intrusion pathway.
- **Groundwater**-Construction of potable water wells and consumption of groundwater will be prohibited.
- **Sediment**-Notification of residual sediment above RALs located under the residual sand cover. Further, removal of RCM and overlaying riprap must be completed in accordance with a Sediment Management Plan, and potentially a Maintenance Plan.

Alternative 3 – Excavation and Off-site Disposal at Boom Landing and WWTP Zones; Horizontal Engineered Barriers at Boom Landing and WWTP Zones; In-situ Treatment of Groundwater, Sediment Monitoring; and ICs.

Capital Costs:	$6,180,000
Periodic Costs:	$1,450,000
Present Value:	$7,630,000
Construction Duration:	three to six months

Alternative 3 consists of the same presumptive elements as Alternative 2 with the addition of excavation and disposal of accessible source material at the WWTP zone and the in-situ groundwater treatment will involve a one-time placement of a reagent within the excavation, with no permanent injection wells installed or used. Source material was identified between 5.5-9 ft bgs over 02. acres and between 8-15.5 ft bgs over approximately 0.6 acres.

The PRP, WPSC, will undertake the same major presumptive elements necessitated in the other soil excavation activities under Alternative 2 with the exception of installing injection wells in the WWTP zone.

J. Comparative Analysis of Alternatives

EPA uses nine criteria to evaluate remedial alternatives for the cleanup of a site. These nine criteria are categorized into three groups: threshold, balancing, and modifying. The threshold criteria must be met for an alternative to be eligible for selection. The threshold criteria are overall protection of human health and the environment and compliance with ARARs.

- Overall Protection of Human Health and the Environment - This criterion describes how the alternative as a whole achieves and maintains protection of human health and the environment.
- Compliance with ARARs - This criterion assesses how the alternative complies with ARARs unless a waiver is provided, in which case this criterion describes why the waiver is justified.

The balancing criteria are used to weigh major tradeoffs among alternatives. The five balancing criteria are long-term effectiveness and permanence; reduction of toxicity, mobility or volume through treatment; short-term effectiveness; implementability; and cost.

- Long-Term Effectiveness and Permanence - This criterion evaluates the long-term effectiveness of alternatives in maintaining protection of human health and the environment after RAOs have been achieved.
- Reduction of Toxicity, Mobility, and Volume through Treatment - This criterion evaluates the anticipated performance of the specific treatment technologies an alternative may employ.
- Short-Term Effectiveness - This criterion assesses the effectiveness of the alternative in protecting human health and the environment during the construction and implementation of a remedy until RAOs have been met. This criterion also evaluates the time required to implement and achieve the RAOs.

- Implementability - This criterion assesses the technical and administrative feasibility of the alternative as well as the availability of goods and services required to implement the remedy.
- Cost - This criterion assesses the capital and O&M costs of each alternative. In addition, the present worth of annualized costs associated with each alternative is calculated using a discount rate of 7 percent before taxes and after inflation. Costs are compared on a present-worth basis. The level of detail in these cost estimates is appropriate for evaluating among alternatives, but the estimates are not intended for use in budgetary planning.

The modifying criteria are state acceptance and community acceptance.

- State Acceptance – This criterion reflects comments from all Wisconsin agencies with an interest in the Site.
- Community Acceptance - This criterion reflects the community's apparent preferences and/or concerns regarding the alternatives.

The following is a comparative analysis of the remedial alternatives other than the No Further Action Alternative.

J.1. Overall Protectiveness of Human Health and the Environment

Alternative 1 is not protective of human health and the environment because no further action would be taken to reduce the presence of MGP source material and MGP-affected media. Further, this alternative will not implement institutional controls, monitoring programs, or contingencies to ensure that human health and the environment will be protected.

Alternatives 2 and 3 would be protective of human health with respect to potential risks from soil, groundwater, soil gas and sediment. Both alternatives will remove accessible MGP source material from Boom Landing, and Alternative 3 will remove source material from the WWTP area. Direct contact, ingestion and inhalation of soil with COCs above the PRGs will be prevented through maintenance of existing pavement and building slabs, installation of soil barriers, and implementation of soil institutional controls with an associated Soil Management Plan. Both alternatives will also address the groundwater plume through *in-situ* treatment and controls to prevent use of Site groundwater within a defined zone. Potential future soil gas and potential vapor intrusion risks will be controlled through requirements to complete additional assessment should land use change. Finally, both Alternatives 2 and 3 will implement controls to restrict the removal of the RCM, regular sheen monitoring, and the combination of restrictions and monitoring of sediments.

J.2. Compliance with Applicable or Relevant and Appropriate Requirements

Section 121(d) of CERCLA and NCP §300.430(f)(1)(ii)(B) require that remedial actions at CERCLA sites attain legally applicable or relevant and appropriate Federal and State requirements, standards, criteria, and limitations which are collectively referred to as ARARs, unless ARARs are waived under CERCLA section 121(d)(4). Compliance with ARARs addresses whether a remedy will meet all of the ARARs or provides a basis for invoking a waiver.

In addition to ARARs, EPA may identify other relevant information, criteria, or guidance to be considered (TBC). TBCs may not be legally binding or enforceable but may be useful for consideration when developing remedial alternatives. Both ARARs and TBCs may be chemical-specific, location-specific, or action-specific. Appendix B summarizes preliminary federal and state ARARs and TBCs. ARARs and TBCs may be modified until a Record of Decision (ROD) is issued and may be reexamined during the five-year review process.

The NCP defines applicable requirements as:

> "…those clean-up standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than federal requirements may be applicable."

The NCP defines relevant and appropriate requirements as:

> "…those clean-up standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws, that, while not 'applicable' to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site. Only those state standards that are identified in a timely manner and are more stringent than federal requirements may be relevant and appropriate."

Alternative 1 would not meet ARARs related to soil, soil gas, and groundwater standards.

Alternatives 2 and 3 would meet all potential chemical, location, and action-specific. The ARARs would be met through:

- Maintenance and installation of direct contact barriers to prevent human exposure to affected soil and groundwater.
- Use of the Institutional Control Implementation Plan, Soil Management Plan, and Maintenance Plan to restrict modification to the direct contact barriers and to current land use.
- Application of active measures to reduce accessible source material through excavation and in-situ groundwater treatment.
- Placement of engineering controls to manage surficial soil exceedances.
- On-going monitoring of the RCM to provide long-term assurance that dissolved-phase MGP constituents in groundwater do not discharge into the Menominee River at concentrations greater than the site-specific discharge limit.
- Monitoring of the post-NTCRA dredge inventory to ensure that at least six inches of clean sand remains over areas with MGP-residuals, and that the 0-6" zone remains below RALs.

J.3. Long-Term Effectiveness and Permanence

Alternative 1 may not provide effective protection of human health and the environment over time. The COCs in soil and groundwater will not naturally attenuate, there will be no monitoring provided to determine if protective levels are reached, and no ICs are implemented to provide protection.

Alternatives 2 and 3 will provide long-term effectiveness and permanent control of potential human health risks from exposure to source material and soil with COCs above PRGs through removal of accessible source material; installation of horizontal direct-contact barriers in the Boom Landing Zone and at the WWTP Zone for Alternative 3, exclusively; restriction of land use and intrusive activities; and injection of on-site treatment reagents in combination with monitoring to restore groundwater to PRGs.

J.4. Reduction of Toxicity, Mobility, and Volume

Reduction of toxicity, mobility, or volume through treatment refers to the anticipated performance of the treatment technologies that may be included as part of a remedy.

Alternatives 1 does not include treatment. Source material, soil, and groundwater will naturally attenuate, but attenuation alone is unlikely to reduce concentrations below PRGs in a reasonable timeframe. In addition, risk resulting from toxicity is not reduced, as Alternative 1 does not involve any engineering or administrative controls. As a result, this alternative will not achieve any of the RAOs.

Alternatives 2 and 3 will involve excavation and off-site disposal of source area of Boom Landing, and Alternative 3 will involve excavation and off-site disposal of source material from the WWTP Zone, that reduces the volume of the most toxic material at the Site. Although off-site disposal does not constitute treatment under this criterion, relocation of affected soil from the Site to a permitted disposal facility will control risk from toxicity and reduce contaminant mobility. In addition, source material at Boom Landing is collocated with the well with the highest historical concentrations of benzene and naphthalene. Removal of source material will remove the primary on-going source contributing to the dissolved-phase groundwater plume, and thereby, reducing contaminant mobility.

After surface soil removal, direct contact barriers will be installed, which will reduce the volume of affected surficial soil that is on-site, and reduce the mobility of affected soil by minimizing the potential windward erosion of affected soil. Risk from toxicity will be mitigated through the installation of the horizontal barrier and requiring continuing obligations to ensure long-term risk mitigation. Active measures involving limited *in-situ* groundwater treatment and monitoring will be undertaken to restore the groundwater plume to PRGs.

J.5. Short-Term Effectiveness

Short-term effectiveness addresses the period of time needed to implement the remedy and achieve RAOs; and any adverse impacts that may be posed to workers, the community and the environment during construction and operation of the remedy until cleanup levels are achieved.

Alternative 1 would have no effect during remedy implementation.

Alternatives 2 and 3 will create a potential for direct contact exposure, fugitive volatile organic emissions, and nuisance odors during excavation. Transporting affected soil to a landfill creates a short-term impact on the community due to increased truck traffic, noise, and potential for increased accidents. With respect to excavation of Boom Landing source material, closure of this public space will be required. However, impact will be minimized by performing the excavation outside of the regular boating season, and completing the activities within three to six months.

For Alternative 3, excavation of surficial soil on the WWTP zone will temporarily impact the standard operations and maintenance of the WWTP and other City of Marinette activities (maintenance garage activities and construction material storage). Excavation and installation of soil barriers is expected to take three to six months, and will be conducted in phases to minimize surface area of open excavations and short-term impact to the City.

For Alternatives 2 and 3, the in-situ groundwater treatment component has the potential to generate fugitive emissions and release vapors to the atmosphere during injection activities. Construction workers and nearby building occupants may have the potential for exposure to airborne contaminants. The exposure will be controlled through best management practices, engineering controls, and adhering to task-specific health and safety procedures. In addition, the oxidant injections will temporarily modify the aquifer geochemistry, and elements that make up oxidants and catalysts will remain in the aquifer following the conclusion of treatment activities. During remedial implementation, it is necessary to monitor dissolve-phase inorganics at the downgradient extent of the plume so that injection activities can be suspended or modified to minimize the potential for off-site migration of byproducts resulting from oxidant injection activities.

Also, large quantities of reactive and concentrated chemical reagents will be required for in-situ treatment, which pose a risk to construction workers and surrounding parties during transportation, handling, storage, and treatment application. Several administrative and procedural requirements could be used to minimize risk, including shipping and storage, selection of highly experienced contractors to administer treatment, selection of slower-reacting and safer reagents, and engineering controls. Reagent injection activities will occur in three events over approximately five years until groundwater PRGs are met.

J.6. Implementability

Implementability addresses the technical and administrative feasibility of a remedy from design through construction and operation. Factors such as availability of services and materials, administrative feasibility, and coordination with other governmental entities are also considered.

Alternative 1 would be implementable, though it does not address the Site risks.

Alternative 2 is partially technically and administratively implementable.

Alternative 3 is partially technically and administratively implementable.

For both Alternatives 2 and 3, there are numerous potential constraints to lateral expansion of the source material excavation. Several utilities are near the source material in Boom Landing, including sizable storm and sanitary discharge pipes along the western property line of Boom Landing. Mann Street and the associated utilities are present to the south. In addition, there is a recently-constructed building on Marinette Marine property, immediately east of the Boom Landing Property Line. WWTP Zone has several restrictions related to existing process units, subsurface utilities, and the Canadian Northern Railroad. The pre-design investigation will identify practical extents of source area removal; however, there are several constraints that may limit lateral expansion of excavation during construction. Even though the extent of excavations may be constrained, unexcavated residual material and dissolved-phase groundwater will be positively affected by the addition of a chemical oxidation reagent into the open excavation during backfill placement.

For Alternative 2, the installation of a horizontal barrier in the WWTP Zone, and for Alternative 3, the excavation in the WWTP Zone, is made complex due to the presence of WWTP infrastructure, labor intensiveness of operations, and disruptive nature of shallow soil excavation on the WWTP property. A modification to Alternative 3 will be made during the remedial design to limit shallow soil excavation and to focus on source removal at the deeper depths. Areas with industrial SL exceedances in the surface soil will be evaluated to see whether horizontal barriers can be placed,

For Alternative 3, another challenging component will be the construction of temporary shoring to the depth of excavation exceeding 10 feet bgs. A dewatering system will be required to reach the desired excavation depth, and dewatering support includes readily available mobile treatment processes followed by discharge to the local WWTP.

J.7. Cost

The estimated total costs for each alternative are FS-level cost estimates that have an expected accuracy of +50% to -30%. Costs for the alternatives range from zero to $7,630,000 as listed below.

Alternative 1 is expected to cost $50,000 for performing the Five-Year Review.

Alternative 2 is estimated to cost $6,870,000

Alternative 3 is estimated to cost $7,630,000.

Table 3: Cost of Alternatives

	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Capital Costs	$0	$6.04M	$6.18M
Annual O&M Costs/LT Costs	$50K	$830K	$1.45M
Total Present Worth Costs	$50K	$6.87M	$7.63M
Construction/Implementation Timeframe	None	3 months	4 months
Time to Completion	N/A	5 years	10 years

*LT= Long-term (30-year analysis period) *M=Million dollars *K=Thousand dollars

The final cost estimate for the selected remedy will be developed and refined during the RD.

J.8. State Acceptance

Wisconsin DNR has indicated concurrence with the selection of Alternative 3. The state concurrence letter will be added to the AR upon receipt.

J.9. Community Acceptance

The community has not objected to the selected remedy, as evidenced by comments received during the public comment period, which ran from July 17 through August 16, 2017. Some commenters indicated support for the selected remedy, while others highlighted the challenges that may arise from the work at the WWTP (see Responsiveness Summary).

K. Principal Threat Wastes

The NCP establishes an expectation that EPA will use treatment to address the principal threats posed by a site wherever practicable (NCP §300.430(a)(1)(iii)(A)). The "principal threat" concept is applied to the characterization of "source materials" at a Superfund site. A source material is material that includes or contains hazardous substances, pollutants or contaminants that act as a reservoir for migration of contamination to groundwater, surface water or air, or acts as a source for direct exposure.

The principal threat waste at the WPSC Marinette MGP Site is PAH- and NAPL- contaminated soil because the toxicity of the material poses a potential risk of 10^{-3} or greater and contributes to groundwater contamination, as defined in *A Guide to Principal Threat and Low Level Threat Wastes*, Office of Solid Waste and Emergency Response 9380.3-06FS, November 1991.

L. Selected Remedy

Based on consideration of the requirements of CERCLA, the detailed analysis of the remedial alternatives, and public comments, EPA has selected **Alternative 3**, with modifications (see J.2 Documentation of Significant Changes), as the Selected Remedy. The follow subsections provide EPA's rationale for the Selected Remedy and a description of its anticipated scope, how the remedy will be implemented, and its expected outcomes.

L.1. Summary of Rationale for the Selected Remedy

The Selected Remedy is protective of human health and the environment, complies with ARARs, and provides the best balance of tradeoffs among the balancing criteria, including addressing many of the community's concerns raised through public comments.

It reduces risks within a reasonable time frame, is practicable, and provides for long-term reliability of the remedy. It will achieve substantial risk reduction by excavating and capping areas with the most contaminated soils, reduce remaining risks to the extent practicable through in-situ groundwater treatment, and manage remaining risks to human health through institutional controls.

The Selected Remedy is more permanent in the long term because it addresses more contamination in all areas of the Site.

Although the Selected Remedy presents greater short-term impacts to the community and implementability challenges compared to Alternative 2, it achieves higher post-construction risk reduction for human receptors compared with current risks from contaminated media. The Selected Remedy ensures that the preference for treatment is achieved for all media.

L.2. Documentation of Significant Changes

Based on the comments received by the City of Marinette Water and Wastewater Commission, the City Mayor, and other City officials, as well as comments received by the PRP, and Wisconsin DNR, EPA made a modification to Alternative 3 that constitutes a significant change.

In lieu of excavating and replacing the top two feet of soil at the majority of the WWTP zone, EPA will consider utilizing horizontal engineered barriers and/or ICs for that area. The areas to be addressed through excavation, horizontal engineered barriers, and ICs will be defined during the Remedial Design phase. This significant change may alter the estimated cost of the remedy; however, the cost will probably remain in the -30% to +50% range. The other components of Alternative 3 as the selected remedy will remain the same and are described below.

L.3. Description of Selected Remedy

Alternative 3, now the Selected Remedy, includes excavation and off-site disposal of accessible source material located within the Boom Landing and WWTP zones, installation of horizontal engineered barriers over surficial soil that exceeds PRGs in the Boom Landing zone and in a portion of the WWTP zone, and institutional controls to manage remaining potential soil, groundwater, soil gas, and sediment risks.

L.4. Summary of Estimated Selected Remedy Costs

Total present value costs estimated for the Selected Remedy are $7,630,000. The total capital cost is $6,180,000 and the total periodic costs are $1,450,000. Changes in the cost elements are likely to occur as a result of new information and data collected during the engineering design of the Selected Remedy. Major changes may be documented in the form of a memorandum in the Administrative Record file, an explanation of significant differences, or a ROD amendment. The cost estimate is an order-of magnitude engineering estimate that is expected to be within +50 to -30% of the actual project cost.

L.5. Expected Outcomes of Selected Remedy

The intent of the Selected Remedy is to be protective of human health and the environment by reducing risks from the following: direct contact with, and ingestion of, soil and groundwater. The Selected Remedy will actively address contaminated soil and groundwater within the Site, thereby reducing exposure to contaminant concentrations in those media, which will significantly reduce human health risks at the Site to acceptable levels.

M. Statutory Determinations

Under CERCLA §121 and the NCP §300.430(f)(5)(ii), the EPA must select remedies that are protective of human health and the environment, comply with ARARs (unless a statutory waiver is justified), are cost effective, and utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable.

In addition, CERCLA includes a preference for remedies that employ treatment that permanently and significantly reduces the volume, toxicity, or mobility of hazardous wastes as a principal element and a bias against off-site disposal of untreated wastes. The following sections discuss how the Selected Remedy meets these statutory requirements.

M.1. Protection of Human Health and the Environment

Alternative 3 will protect human health and the environment by reducing the quantity of contamination through soil excavation and disposal, placement of horizontal soil barriers, and maintenance and construction of new soil barriers, and in-situ treatment and injection treatment of groundwater. Institutional controls will prevent disruption to soil barriers, prevent groundwater usage until PRGs are achieved, and prevent disruption to the sediment RCM.

M.2. Compliance with ARARs

The selected remedy will comply with all ARARs.

M.3. Cost-Effectiveness

Alternative 3 is cost effective because the remedy's costs are proportional to its overall effectiveness [see 40 Code of Federal Regulations (CFR) §300.430(f)(l)(ii)(D)]. This determination is made by evaluating the overall effectiveness of those alternatives that satisfied the threshold criteria (i.e., that are protective of human health and the environment, and comply with all federal and state ARARs, or as appropriate, waive ARARs). Overall effectiveness is evaluated by assessing three of the five balancing criteria in combination (long-term effectiveness and permanence; reduction in toxicity, mobility, and volume through treatment; and short-term effectiveness). The overall effectiveness of each alternative is then compared to each alternative's costs to determine cost effectiveness. The relationship of the overall effectiveness of the Selected Remedial Action was determined to be proportional to its costs and hence represents a reasonable value for the money to be spent.

M.4. Utilization of Permanent Solutions and Alternative Treatment Technologies to the Maximum Extent Practicable

EPA has determined that Alternative 3 represents the maximum extent to which permanent solutions and treatment technologies can be utilized in a practicable manner at the site. Of those alternatives that are protective of human health and the environment and comply with ARARs, EPA has determined that the Alternative 3 addresses Site risks while also considering the statutory preference for treatment as a principal element, bias against off-site treatment and disposal, and considering state and community acceptance.

Alternative 3 will reduce contaminants in the soil and groundwater at the Site. The Selected Remedy accomplishes this through excavation and disposal, placement of barriers, and groundwater treatment. Because no further contaminant source will exist, the remedy will be permanent.

M.5. Preference for Treatment as a Principal Element

By treating the contaminated soil and groundwater using in-situ chemical reduction and injection of reducing reagents, Alternative 3 satisfies the statutory preference for remedies that employ treatment as a principal element.

M.6. Five-Year Review Requirements

CERCLA §121(c) and the NCP §300.430(f)(5)(iii)(C) provide the statutory and legal bases for conducting Five-Year Reviews. Because this remedy is expected to take at least 5 years to achieve the RAOs, it will result in hazardous substances remaining on-site in the groundwater and possibly in the soils above levels that allow for unlimited use and unrestricted exposure. A statutory review will be conducted every 5 years after initiation of the remedial action until RAOs are achieved to ensure that the remedy is, or will be, protective of human health and the environment.

N. Documentation of Significant Changes

The Proposed Plan was released for public comment on July 17, 2017, identifying **Alternative 3,** as the Preferred Alternative for the Site. EPA reviewed all written and verbal comments submitted during the public comment period. It was determined a significant change to the remedy, as originally identified in the Proposed Plan, was necessary or appropriate.

This significant change is minimizing the excavation area at the WWTP zone to preclude those areas where the top two feet of soil do not meet cleanup standards and where a horizontal barrier was proposed. Instead, those areas will have an IC placed on them to prevent exposure. The areas with source material on the WWTP zone will still be addressed and the remainder of the remedy will stay the same.

Part 3. Responsiveness Summary

In accordance with CERCLA Section 117, 42 U.S.C. Section 9617, EPA released the Proposed Plan and Administrative Record on July 17, 2017, and the public comment period ran through August 16, 2017, to allow interested parties to comment on the Proposed Plan.

EPA is not required to reprint the comments of the commenter verbatim and may paraphrase where appropriate. In this responsiveness summary, EPA has included large segments of the original comments. However, persons wishing to see the full text of the comment should refer to the commenter's submittal to EPA, which has been included in the Administrative Record. The comments EPA received are shown below in normal text and EPA's response is shown in italics.

A. Stakeholder Comments and Lead Agency Responses

EPA received several written and verbal public comments on the Proposed Plan. The comments are found below:

Comments in Support for the Remedy

Comment 1a: I feel the option that the EPA is suggesting is the proper way to solve the issue at hand.

Comment 1b: I think the best alternative is alternative #3 as it meets all criterion.

Response: Thank you for your support.

General Public Comments

Comment 2:

Question 1: Has vertical and lateral extent of contamination been identified?

Response: Although the Site has gone through thorough the remedial investigation and we have a lot of data on the vertical and horizontal extent of contamination, further delineation sampling will occur during the Remedial Design phase to refine the areas to be addressed.

Question 2: What is being done to mitigate sub-surface impacts?

Response: At present, contaminated soil and groundwater are in place in the former footprint of the manufactured gas plant and the former logrun/slough that served as the preferential pathway for conveyance of MGP contaminants to the Boom Landing zone. There are buildings, pavement, asphalt, and grass over the contaminated soil and groundwater that are acting as barriers to prevent exposure, contact, and ingestion of contaminants.

As part of the chosen remedy, where feasible, the contaminated soil will be excavated and disposed of in a landfill. While the excavation area is open, we will place a chemical reagent that will react, over time, with MGP-waste that is located in the soil and groundwater. Then a horizontal engineered barrier, will be placed in the excavated area, before clean fill and topsoil are added. In areas where pavement or asphalt are present, they will be replaced and/or maintained after the excavation is complete. Once MGP-contaminants are removed and barriers are in place, there will be no risk to exposure to contaminants. Over time, approximately five years, the reagents placed in the excavated pits will continue to neutralize the MGP-wastes in the subsurface soil and groundwater.

Health and Safety Comments

Comment 3a: Careful planning is necessary for the removal of contaminated material with safeguards to protect overall human health, as well as attention paid to compliance of State/Federal procedures and other long term requirements. I strongly recommend all safe guards to be adhered to in soil removal to protect the groundwater located near the water of the Menominee River.

Response: All safeguards to protect human health and the environment will be taken, and all applicable or relevant and appropriate State and Federal requirements will be applied.
As detailed in the FS Rev. 3 Report, and summarized here in this ROD, several general types of safeguards will be applied to this cleanup. These include dust suppression measures to prevent fugitive dust from migrating off-site and into the river; installing temporary shoring to support deeper excavations and prevent run-off; monitoring and maintaining existing surface barriers that currently mitigate potential exposure to surficial soil containing COCs above residential PRGs; and placing barriers in locations not currently limited by an existing barrier.

The highest-contaminated soils will be excavated and sent to a landfill, reagents placed in the excavated soil pits will address MGP-contaminants in deeper soil and in groundwater, and injection wells will be installed to inject chemicals to neutralize MGP-contamination in groundwater. All these efforts will reduce contaminants in soil and groundwater and prevent migration of contaminants back into the Menominee River.

Comment 3b: The City (of Marinette) Officials and Commission Members express concern regarding the potential structural and underground utilities risks associated with excavation within the WWTP, which could cause disruptions of service at the WWTP. They also are opposed to any injection of chemicals into the ground that could have an effect on underground utilities as well. Lastly, and most importantly, the proposed plan poses risks to employees as well as construction workers from all of the activities being done at the site.

Response: Prior to implementation of the remedy, WPS will conduct additional activities to inform the remedial design. During the Remedial Design Phase, WPS will use a utility locater contractor to delineate all sub-surface infrastructure at the WWTP Zone and at the Boom Landing Zone. In addition to the utility locator, WPS will collect addition samples to refine the areas that will be addressed. The project will be designed as such to prevent impacts to utilities and infrastructures. WPS will submit remedial design information for input (from EPA, DNR, The City, and respective property owners) before the design becomes finalized and implemented.

The remedy will be designed and implemented, as such, to minimize disruption of service at the WWTP and within the Boom Landing Zone, and to protect existing WWTP infrastructure. Restoration work following the remedial action will restore properties to an equal. EPA and WPS will work with the Commission and City officials to ensure the designed remedy meets the City's expectations and requirements in both cleanup zones.

EPA's mission and priority is to protect human health and the environment. The potential risks to human health for workers at the WWTP and construction workers in the WWTP zone was evaluated utilizing EPA's 9 Criteria prior to the selection of the remedy. The 9 Criteria are:

Threshold Criteria

1. Overall protection of human health and the environment
2. Compliance with ARARs (applicable or relevant and appropriate standards)

Primary Balancing Criteria

3. Long-term effectiveness and permanence
4. Reduction of toxicity, mobility or volume
5. Short-term effectiveness
6. Implementability
7. Cost

Modifying Criteria

8. State acceptance
9. Community acceptance

The most important criterion in evaluating a remedy is "overall protection of human health and the environment." *EPA considered the risks and benefits associated with each remedy presented in the FS and for the remedy that was selected. Considered were the risks to long-term workers in areas to be addressed (e.g. WWTP employees), short-term workers in areas that will be addressed (e.g. construction workers conducting the cleanup in the Boom Landing and WWTP Zones), community members that may be impacted by increased truck traffic, people that use Boom Landing for recreational purposes, and even property trespassers.*

There will be potential short-term risks associated with the selected remedy and there will be risk-mitigation to minimize those risks. Some of the risk-mitigation measures include developing and following a Health and Safety Plan *to minimize risks to all that may be potentially impacted by the cleanup; putting up barriers and clearly marking areas that are disturbed; limiting access to areas that are undergoing remedial action; etc.*

Comments from the Potentially Responsible Party

Comments from WPS are separated and paraphrased below:
General Comments:

Comment 4: "In general, WPS has significant concerns with USEPA's conclusion that invasive excavation, soil removal and oxidant injection activities are warranted on the City of Marinette wastewater treatment plant (WWTP) property in order to adequately protect human health and the environment. As noted in the approved Feasibility Study Report, Revision 3 (FS) and related correspondence, the significant short term risks to (1) ongoing plant operations, (2) the structural integrity of above ground structures, and (3) of damage to critical below ground infrastructure associated with such activity in no way justify the small reduction in hypothetical human health risk or threats to groundwater quality that might be achieved. USEPA's own assessment shows the human health risks represented by current baseline conditions for soils on the WWTP property fall well within the acceptable risk management range, particularly for a secure, limited access facility such as the WWTP for which the default "reasonable maximum" exposure assumptions inherent in the derivation of PRGs for soils under an "industrial" scenario do not apply. Finally, as documented in the approved FS, the use and implementation of institutional controls in the form of materials handling and cover maintenance plans will be fully adequate in attaining the health and environmental quality related remedial action objectives (RAO) for the WWTP property in a far more efficient and cost effective manner."

Response: EPA's selected remedy was informed by the Site RI and FS reports in conjunction with EPA Law and Guidance. Remedy implementation risks were reviewed and compared with the benefits of removing principal threat waste and the decreased amount of time in achieving groundwater cleanup standards. The risks listed above can be minimized with planning during the Remedial Design phase of the project.

Comments on Safety

Comment 5a: The USEPA-preferred alternative involves excavating a minimum 9-foot deep hole directly abutting the entire eastern side of the WWTP's Aeration Basin.

The load of the Aeration Basin will significantly complicate the excavation and necessitate design and construction of a very complicated and extensive shoring system. Installation of shoring near the Aeration Basin risks potential structural and foundational damage to this structure. Such potential for damage would be further exacerbated by the need for dewatering the excavation area to an elevation well below the design depth, thereby creating a cone of depression that would affect all surrounding structures. Any substantial damage to the Aeration Basin will compromise the operational viability of the City's WWTP and would likely result in the plant being off line for an extended period, realignment of infrastructure, sewage treatment bypasses and related astronomical repair costs. Likewise, the injection of corrosive reagents at the volumes needed to oxidize the residual adsorbed mass in specific locations on the WWTP may lead to significant damage to the existing underground infrastructure to the point where the WWTP may need to temporarily cease operations to allow for repair. If chemical oxidants were to infiltrate the WWTP process piping it could also have a detrimental effect on the operation of the plant.

Response 5a: Based on the information presented in the RI and FS reports for this Site, EPA will rely on design engineering to refine the areas to be excavated to maximize principal threat waste removal and minimize impact to surrounding structures. Also during the remedial design, it may be prudent to conduct a pilot test to determine which chemical oxidants to apply to the excavated areas, and design a method of placement/injection that would minimize the volume of corrosive reagents and minimize impact to nearby infrastructure.

Comment 5b: Secondary safety concerns with the USEPA-preferred alternative relate to excavation in or adjacent to gas, underground electric, storm water, and sanitary sewer utility lines. Excavation around, or temporary relocation of, these utilities represents significant risk to the construction workers and risks damage to the utility, causing service disruptions for the City of Marinette.

Comment 5c: Finally, we believe that the traffic safety issues, odor, noise and potential road damage associated with hauling well over 1,300 additional loads of material through downtown Marinette that would be required with the USEPA-preferred Alternative 3 (USEPA) should have been given more serious consideration in the remedial action decision.

Response to 5b and 5c: EPA's mission and priority is to protect human health and the environment. The potential risks to human health was evaluated utilizing EPA's 9 Criteria prior to the selection of the remedy. The 9 Criteria are:

Threshold Criteria

1. Overall protection of human health and the environment
2. Compliance with ARARs (applicable or relevant and appropriate standards)

Primary Balancing Criteria

3. Long-term effectiveness and permanence
4. Reduction of toxicity, mobility or volume
5. Short-term effectiveness

6. Implementability
7. Cost

Modifying Criteria
8. State acceptance
9. Community acceptance

The most important criterion in evaluating a remedy is "overall protection of human health and the environment." *EPA considered the risks and benefits associated with each remedy presented in the FS and for the remedy that was selected. Considered were the risks to long-term workers in areas to be addressed (e.g. WWTP employees), short-term workers in areas that will be addressed (e.g. construction workers conducting the cleanup in the Boom Landing and WWTP Zones), community members that may be impacted by increased truck traffic, people that use Boom Landing for recreational purposes, and even property trespassers.*

There will be potential short-term risks associated with the selected remedy and there will be risk-mitigation to minimize those risks. Some of the risk-mitigation measures include developing and following a Health and Safety Plan *to minimize risks to all that may be potentially impacted by the cleanup; putting up barriers and clearly marking areas that are disturbed; limiting access to areas that are undergoing remedial action; etc.*

Furthermore, EPA will expect WPS to hire a utility locater contractor to delineate the extent of utility infrastructure and to design the remedy to work around the utilities to prevent disruption of service.

A health and safety plan will be developed during the Remedial Design to maximize safety during construction. EPA will expect WPS to have a health and safety officer on-site to oversee implementation of the health and safety plan and to prevent unsafe activities.

Traffic safety issues, odor, noise and potential road damage associated with hauling out excavated material has been taken into consideration. WPS will have to work with the City of Marinette to determine the size of the trucks to be used for hauling excavated materials to prevent road wear and damage. WPS will use trucks with odor and spill reducing capabilities (trucks with covers), and come up with safe route options for traffic safety and as a means to reduce noise in the neighborhoods.

Comments on Costs
Comment 6: "Alternative 3 (USEPA) will cost an estimated $7.63 million, making it the most costly (sic) alternative evaluated in the FS Report. This alternative is $4.01 million more than Alternative 2 (FS). This increased cost is primarily related to deep excavation of source areas in the WWTP and horizontal barrier construction on the WWTP. "

Response: An extensive analysis was completed to evaluate each alternative presented in the FS. Alternative 3, as presented in the Proposed Plan and the selected remedy in the ROD, was selected based on the evaluation against the 9 Criteria, including cost considerations.

Threshold Criteria

1. Overall protection of human health and the environment
2. Compliance with ARARs (applicable or relevant and appropriate standards)

Primary Balancing Criteria

3. Long-term effectiveness and permanence
4. Reduction of toxicity, mobility or volume
5. Short-term effectiveness
6. Implementability
7. Cost

Modifying Criteria

8. State acceptance
9. Community acceptance

The selected remedy meets the threshold criteria, primary balancing criteria, and the modifying criteria. The remedy was selected because it removes and treats principal threat waste in the WWTP Zone, and will result in overall waste volume reduction at the Site.

General Comments

Comment 7: There are internal inconsistencies and differences between the Factsheet and approved FS and between the Proposed Plan and the approved FS. There are other errors in the Proposed Plan. Specific inconsistencies and errors can be found on pages 2-7 (out of 13) in the *Comments on USEPA Proposed Remedial Action Plan* submitted by WPS on August 15, 2017, available in the Administrative Record.

Response: EPA drafted the Factsheet and Proposed Plan utilizing the details presented in FS Revision 2. FS Revision 3 was not submitted to EPA until close of business on June 26, 2017.

EPA's ROD reflects the details as presented in the approved RI and FS Rev. 3, with the exception to Alternative 2 as presented in the FS Rev. 3. Alternative 2, as presented in FS Rev. 3 does not comply with State ARARs at 10^{-6} risk level and EPA HQs recommended exclusion of this alternative from the Proposed Plan, as presented in the August 3, 2017 letter from EPA to WPS on that subject.

Further, the listed errors have been reviewed and corrections to those errors have been made if those topics carried forth into the ROD.

Comments from Wisconsin Department of Natural Resources

Comment 8: DNR considers sediment, along with soil and groundwater, to be a media of concern.

Response: The majority of the MGP-impacted sediments were addressed during the 2012 Removal Action. EPA will evaluate the efficacy of the sediment cleanup as part of the first Five Year Review for the site.

Comment 9: If residual soil contamination, above remediation goals, remains post excavation at a depth of 0-4' below ground surface, the following will be required: cap(s), institutional controls, continuing obligations (COs), a soil cover monitoring and maintenance plan, and a soil management plan.

Response: Noted. EPA considers surface soil as the top two feet (0-2'). Post-remedial action sampling will inform the next steps needed to address soil contamination, including institutional controls, continuing obligations, soil cover monitoring and maintenance plan, and soil management plan.

Comment 10: "Alternatives 2 and 3 within the Proposed Plan specify the long-term monitoring program will include visual inspections of the reactive core mat (RCM) and sediment sampling. It is unclear whether additional sampling of the residual sand cover will be completed. The DNR, in prior correspondence, recommended continued monitoring of the residual sand cover as part of the 5-year review process. Please clarify whether or not monitoring of the residual sand cover will be included in the 5-year review process or as part of a separate long-term monitoring plan."

Response: Sediment sampling, including sampling the sand cover, is part of the selected remedy. Additional sediment sampling may be required to inform the five-year review report.

Comment 11: "Alternatives 2 and 3 within the Proposed Plan specify effectiveness monitoring of the sediment RCM and institutional controls to manage potential risks associated with soil, groundwater, soil gas and sediment.

The DNR supports future effectiveness monitoring of the sediment RCM. The DNR also considers the RCM to be an engineering control. Per Wis. Stats. § 292.01(3m), 'engineering control' means an object or action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap, soil cover, or in-place stabilization, but not including a sediment cover.

Further clarification is needed with respect to sediment and what is meant by "institutional controls" and "specific restrictions to be included on the Wisconsin DNR GIS Registry" for this media. The agencies will need to categorize, per Wis. Stats. § 292.01 definitions, the residual sand cover as an engineering control, defined above, or a sediment cover.
Wis. Stats. §292.01 (17m), defines 'sediment cover' as a layer of uncontaminated sand or similar material that is deposited on top of contaminated sediment. This categorization will then be used by the agencies to determine the institutional controls, continuing obligations and specific restrictions to be included on the Wisconsin DNR GIS Registry for sediment."

Response: EPA defines ICs as non-engineered instruments, such as administrative and legal controls, that help to minimize the potential for exposure to contamination and/or protect the integrity of a response action.

ICs typically are designed to work by limiting land and/or resource use or by providing information that helps modify or guide human behavior at a site. ICs are a subset of Land Use Controls (LUCs). LUCs include engineering and physical barriers, such as fences and security guards, as well as ICs. The intent is to use the DNR GIS Registry to document areas of sediment that are not to be disturbed without prior notification by the party and without approval by DNR. Specific restrictions will be enumerated during the Remedial Design.

Appendix A – Administrative Record Index

U.S. ENVIRONMENTAL PROTECTION AGENCY
REMEDIAL ACTION

ADMINISTRATIVE RECORD
FOR THE
WPSC MARINETTE MGP SITE
MARINETTE, MARINETTE COUNTY, WISCONSIN

ORIGINAL
JULY 17, 2017
SEMS ID: 935139

NO.	SEMS ID	DATE	AUTHOR	RECIPIENT	TITLE/DESCRIPTION	PAGES
1	915367	6/21/13	Tlachac, E., and Mika, K., Natural Resource Technology, Inc.	Gielniewski, M., U.S. EPA	Final Report - Focused NAPL and Sediment Removal Action (W/Cover Letter)	1723
2	915370	6/27/14	Hennings, B., and Hagen, H., NRT, Inc.	Gielniewski, M., U.S. EPA	Remedial Investigation Report - Revision 0	4729
3	915368	2/2/15	Hennings, B., and Hagen, H., NRT, Inc.	Gielniewski, M., U.S. EPA	Remedial Investigation Report - Revision 2	10118
4	934765	5/20/16	Natural Resource Technology, Inc.	File	Feasibility Study Rev 2 W/Response to Comments	1157
5	935125	6/26/17	Natural Resource Technology, Inc.	Gielniewski, M., U.S. EPA	Feasibility Study Rev 3 (W/Response to Comments)	1156
6	935140	7/17/2017	U.S. EPA	Public	Proposed Plan for Cleanup - WPSC Marinette Former MGP	41

Appendix B – ARARs Tables

Chemical-Specific ARARs

Chemical-specific ARARs are generally health- or risk-based standards, defining concentration limits for environmental media or discharges. These requirements may be used to set cleanup levels for COC in environmental media.

MEDIA	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
FEDERAL					
Groundwater	Groundwater Quality Standards	Alternatives 1-3	40 CFR Part 141.11 to 141.13– Safe Drinking Water Act of 1974	Relevant and Appropriate	The National Primary Drinking Water Regulations establish health-based standards for public drinking water systems [maximum contaminant levels (MCLs)]. MCLs are legally enforceable federal drinking water standards and relevant and appropriate to groundwater.
WISCONSIN					
Soil	Soil Cleanup Standards	Alternatives 1-3	Wis. Admin. § NR 720.07 to § NR 720.13: Soil Cleanup Standards	Applicable	Soil Cleanup Standards are legally applicable to soil, preferred method for determining RCLs outlined based on EPA soil screening values and 10-6 for individual compounds and 10-5 for cumulative risk, alternate RCLs can be developed with input from WDNR.
Groundwater	Groundwater Quality Standards	Alternatives 1-3	Wis. Admin. § NR 140.01 and § NR 140.12: Groundwater Quality	Applicable	NR 140 Groundwater Quality Standards are legally applicable to all groundwater, regardless of groundwater use o Generally, NR 140 PALs are the groundwater cleanup goal for all sites, however, flexible closure requirements in NR 726 may be used to set ESs as the primary ROD goal, provided that an adequate source control action is conducted and groundwater monitoring shows a stable or receding plume everywhere groundwater is monitored, including source and NAPL areas.
			Wis. Admin. § NR 726.05(4), §NR 726.05(6), § NR 726.05(7), and § NR 726.05(8), Case Closure	Relevant and Appropriate	NR 726 Case Closure Cleanup requirements are relevant and appropriate
Sediment	Surface Water Quality Standards	Alternatives 1-3	Wis. Admin. § NR 105.04 to §NR 105.07, § NR 105.10: Surface Water Quality Criteria and Secondary Values for Toxic Substances	To Be Considered	Surface Water Quality Standards. Refer to WDNR Publication PUBL-RR-606 (see TBC, page 4)
Surface Water	Surface Water Quality Standards	Alternatives 1-3	Wis. Admin. § NR 105.04 to §NR 105.07, § NR 105.10: Surface Water Quality Criteria and Secondary Values for Toxic Substances	Applicable	Surface Water Quality Standards for the MGP-related COCs at the site are applicable to monitoring of surface water as part of evaluation of the existing cap.

Chemical-Specific ARARs (Continued)

MEDIA	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
Soil Gas/Indoor Air – Chemical Specific	Indoor Air Quality and Vapor Migration	Alternatives 1-3	Wis. Admin. § NR 720.12 Soil Cleanup Standards	Applicable	NR 720.12: Soil Cleanup Standards are legally applicable.
			Wis. Admin. § NR 726.05(4) and § NR 726.15 Case Closure	Relevant and Appropriate	NR 726 Cleanup for Closure is relevant and appropriate • Indoor Air Quality Standards are used to develop Vapor Action Levels for MGP COCs in indoor air and Vapor Risk Screening Levels for MGP COCs in sub slab and soil gas, and in groundwater. • Actions must be taken to ensure soil and groundwater are remediated such that indoor air from vapor intrusion is addressed; the rule also requires vapor mitigation systems for occupied building if needed to address an immediate threat. • Note: Guidance (which would be a TBC) is planned to allow avoiding vapor mitigation systems in vacant buildings with VI issues provided a continuing obligation (CO) is put in place to require the RP to notify WDNR if the building use changes and possibly install a system.

Location-Specific ARARs

Location-specific ARARs are based on the Site's characteristics or location, including natural Site features such as wetlands, floodplains, and endangered or threatened species and habitats. Location-specific ARARs may also apply to man-made features, such as cultural resource areas.

LOCATION	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
			FEDERAL		
Reactive Core Mat and Residual Sand Cover Area	Clean Water Act (CWA) (Section 401 and 404)	Alternatives 2 and 3	40 CFR 121, 230; & 33 CFR 320, 323, 325 and 328	Potentially Applicable if future contingent sediment remedial action is required	Regulates the discharge of dredge and fill materials into waters of the United States. Potentially applicable, if future contingent sediment remedial action is required.
			WISCONSIN		
Boom Landing Zone	Navigable Water Ways Requirements	Alternatives 2 and 3	Wis. Stat. § 30.12; Wis. Stat. § 30.195, § 30.20: Navigable Waters, Harbors and Navigation	Potentially Applicable	Should soil excavation or other remedial activities impact the bank of the Menominee River, Navigable Water Ways Requirements will apply.
		Alternatives 2 and 3	Wis. Stat. § 281.15, §281.16 § 281.17, § 281.31, 281.33, 281.34: Water and Sewage	Potentially Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 328.35 and § NR 328.38: Shore Erosion Control Structures in Navigable Waterways	Potentially Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 341.035; § NR 341.05; § NR 341.06 § NR 341.07§ NR 341.08: Grading on the Bank of Navigable Waterway	Potentially Applicable	

Action-Specific ARARs

Action-specific ARARs are technology-based or activity-based limits used to guide implementation of the remedial action or guide how remedial waste may be handled.

Soil Action-Specific ARARs

MEDIA	REQUIREMENT, CRITERIA, STANDARD,	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
FEDERAL					
NONE IDENTIFIED					
WISCONSIN					
Wastewater Discharges to Publically Owned Treatment Works (POTW)	Surface Water Effluent Standards, Criteria, and Limitations	Alternatives 2 and 3	Wis. Stat. § 281.15, § 281.16, § 281.17: Water and Sewage	Applicable	Surface water quality effluent standards, criteria and limitations are Applicable where dewatering during soil excavation may necessitate discharge to the Menomonee River. Discharge to POTW is an off-site action, and any pretreatment requirements would need to be met.
		Alternatives 2 and 3	Wis. Stat. § 283: Pollution Discharge Elimination, Subchapter III Standards: Effluent Limitations	Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 106.06, § NR 106 Subchapter V, § NR 106 Subchapter VI: Procedures for Calculating Water Quality Based Effluent Limitations for Point Source Discharges to Surface Waters	Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 200.22 - Application for Discharge Permits and Water Quality Standards Variances	Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 207.03 to § NR 207.05: Water Quality Antidegradation	Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 218.05 to § NR 218.11: Method and Manner for Sampling	Applicable	
		Alternatives 2 and 3	Wis. Admin. § NR 219.04: Analytical Test Methods and Procedures	Applicable	

Soil Action-Specific ARARs (Continued)

MEDIA	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
Site Disturbance	Storm Water Runoff Requirements	Alternatives 2 and 3	Wis. Stat. § NR 281.33: Water and Sewage	Applicable	All are Applicable. Storm water runoff requirements apply during excavation activities at sites equal to or greater than one acre that may result in discharge of storm water to the Manitowoc River.
			Wis. Admin. § NR 216.46 and § NR 216.47: Storm water Discharge Permits	Applicable	
			Wis. Admin. § NR 151.015 or § NR 151.01: Runoff Management	Applicable	
Site Disturbance In-Situ Treatment of Soil Soil that generates vapors	Air Emissions Requirements, Criteria, Limitations	Alternatives 2 and 3	Wis. Admin. § NR 415.04(1), § NR 415.04(2)(a), § NR 415.04(2) b - Control of Particulate Emissions	Applicable	Air emission requirements will be applicable during soil excavation and blending activities that generate fugitive dust and/or vapors Air emission requirements will be applicable to in-situ treatment alternatives that involve the generation of vapors.
			Wis. Admin. § NR 419.07 - Control of Organic Compound Emissions	Applicable	
			Wis. Admin. § NR 429.03 - Malodorous Emissions and Open Burning	Applicable	
			Wis. Admin. § NR 445.07, § NR 445.09 - Control of Hazardous Pollutants	Applicable	

Groundwater Action-Specific ARARs

MEDIA	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
FEDERAL					
NONE IDENTIFIED					
WISCONSIN					
All Groundwater Alternatives	Groundwater Monitor Well Requirements	Alternatives 2 and 3	Wis. Admin. § NR 141.055 to§ NR 141.31: Groundwater Monitor Well Requirements	Applicable	Groundwater monitoring is required to demonstrate the effectiveness of any groundwater remedy on reducing concentrations of MGP COCs.
			Wis. Stat.§ NR 285.27: Air Pollution	Applicable	
In-Situ Chemical or Thermal Treatment	Air Emissions Requirements, Criteria, Limitations	Alternatives 2 and 3	Wis. Admin. § NR 415.04(1), § NR 415.04(2)(a), § NR 415.04(2)(b)- Control of Particulate Emissions	Applicable	Air Emission requirements, criteria and limitations will be applicable during remediation activities that generate vapors during injection, vapor recovery, and/or treatment of pumped groundwater.
			Wis. Admin. § NR 419.05(2); NR 419.07 (2)(a) and NR 419.07 (2)(b) - Control of Organic Compound Emissions	Applicable	
			Wis. Admin. § NR 429.03 - Malodorous Emissions and Open Burning	Applicable	
			Wis. Admin. §NR 431.03 - Control of Visible Emissions	Applicable	
			Wis. Admin. §NR 445.07(1), §NR 445.09(1) to §NR	Applicable	
In-Situ Chemical Treatment In-Situ Enhanced Bioremediation	Injection Well Requirements	Alternatives 2 and 3	Wis. Admin. § NR 815.09 and § NR 815.10: Injection Wells	Applicable	Substantive requirements of the injection well regulation are applicable for in-situ chemical treatment via injection of fluids.
			Wis. Admin. § NR 140 Groundwater Quality, Subchapter III Evaluation and Response Procedures:	Applicable	

All Media Action-Specific ARARs

MEDIA	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	TYPE OF ARAR	RELATIONSHIP BETWEEN REQUIREMENT, CRITERIA, STANDARD AND/OR LIMIT AND ALTERNATIVE COMPONENT AND OTHER COMMENTS
FEDERAL					
NONE IDENTIFIED					
WISCONSIN					
All Media – Chemical Specific	Laboratory Certification Requirement	Alternatives 2 and 3	Wis. Admin. § NR 149: Laboratory Certification and Registration Wis. Admin. § NR 299.04: Water Quality Certification	Applicable	Applicable. Any sampling during design and implementation must meet these requirements
Remediation Standards, Requirements, and Initiatives	Remedy selection, design, implementation and operation and maintenance requirements	Alternatives 2 and 3	Wis. Admin. § NR 724.13 § NR 724.17; § NR 724.19, Remedial and Interim Action Design, Implementation, Operation, Maintenance and Monitoring Requirements	Applicable	Applicable. The remedial action documents provide standards and requirements for remediation of contamination sites in Wisconsin. NR 722 is very similar to the NCP for remedy evaluation and selection.

Full Compliance Required

Other Non-ARAR Requirements (Full Compliance is Required)

ALTERNATIVE COMPONENT	REQUIREMENT, CRITERIA, STANDARD, LIMIT	RELEVANT ALTERNATIVES	CITATION	Relationship between requirement, criteria, standard and/or limit and Alternative Component and other Comments
FEDERAL				
NONE IDENTIFIED				
WISCONSIN				
Institutional Controls – any media	Notification for Residual Contamination and Continuing Obligation (CO) Requirements	Alternatives 2 and 3	Wis. Admin. § NR 725.05, § NR 725.07, and § NR 726.06 to § NR 726.15	Should WI CO responsibilities be used as additional ICs, then the rule requirements are applicable. To be enforceable, WDNR must issue an approval of a remedial action type plan with enforceable requirements for the continuing obligations. Enforcing COs at properties not controlled by the RP could be an issue.

To Be Considered Standards, Guidance, and Initiatives

STANDARD, GUIDELINE, INITIATIVE	RELEVANT ALTERNATIVES	CITATION	Relationship between TBC and Alternative Component
FEDERAL			
NONE IDENTIFIED			
WISCONSIN			
Soil Cleanup Standards	Alternatives 2 and 3	WDNR Guidance Document: "Soil Residual Contaminant Level Determinations Using the U.S. EPA Regional Screening Level Web Calculator" (WDNR PUBL-WR-890, January 23, 2014) WDNR Guidance Document: "RR Program's RCL Spreadsheet Update"	These documents provide guidance on applying the U.S. EPA Screening Level Web Calculator to Wisconsin soils to calculate soil cleanup standards.
Air Management Guidelines Community Involvement	Alternatives 2 and 3	Wisconsin Bureau of Environmental and Occupational Health, Department of Health and Family Services: "Health-based Guidelines for Air Management and Community Involvement During Former Manufactured Gas Plant Clean-ups" (March 23, 2014)	This document provides guidance on developing Air Management Plans to protect human health during remedial activities at MGP sites in Wisconsin.
Soil Cover Guidance	Alternatives 2 and 3	WDNR Guidance Document: "Guidance for Cover Systems as Soil Performance Standard Remedies" (WDNR PUBL-RR-709, October 2013)	This document provides guidance on cover systems and soil performance standard remedies.
Remediation Standards, Requirements, and Initiatives	Alternatives 2 and 3	Wisconsin's Initiative for Sustainable Remediation and Redevelopment in the State of Wisconsin, A Practical Guide to Green and Sustainable Remediation in the State of Wisconsin. (WDNR Pub-RR-911, January 2012)	The Guide to Green and Sustainable Remediation provides guidance on implementing the US. EPA's Superfund Green Remediation Strategy (September 2010) at cleanup sites in Wisconsin.
Sediment Quality Guidelines	Alternatives 2 and 3	WDNR Guidance Document: "Wisconsin Consensus-Based Sediment Quality Guidelines (WDNR PUBL-WT-732, December 2003	This document provides guidelines on developing sediment cleanup levels that are protective of benthic macroinvertebrate species.
Vapor Intrusion Guidance	Alternatives 2 and 3	WDNR Guidance Document: "Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin" (WDNR PUBL-RR-800, December 2010). WDNR Guidance Document: "Addressing Vapor Intrusion at Remediation & Redevelopment Sites in Wisconsin" (WDNR PUBL-RR-800) Update (July 2012) WDNR Guidance Document: "Sub-slab Vapor Sampling Procedures" (WDNR PUBL-RR-986, July 2014).	These documents provide guidance on the investigation and remediation of the vapor intrusion pathway at contamination sites in Wisconsin and the basis for calculating Indoor Air Vapor Action Levels and Vapor Risk Screening Levels. Also provided is guidance on how vapor intrusion is addressed through continuing obligations applied at case closure at contaminated sites in Wisconsin.
Institutional Controls (Continuing Obligations) Requirements	Alternatives 2 and 3	WDNR Guidance Document: "Guidance on Case Closure and the Requirements for Managing Continuing Obligations" (WDNR PUBL-RR- 606, April 2014): WDNR Guidance Document: "DNR Case Closure Continuing Obligations: Vapor Intrusion" (WDNR PUBL-RR-042, Aug 2015)	These documents provide guidance on which vapor intrusion continuing obligations should be selected when preparing for case closure.

Acronyms
ARARs: Applicable or Relevant and Appropriate
Requirements CO: Continuing Obligation
WDNR: Wisconsin Department of Natural Resources
MGP COCs: Manufactured Gas Plant Compounds of Concern
Wis. Stat.: Wisconsin Statute
Wis. Admin: Wisconsin Administrative Code

Appendix C – Tables from the RI's Human Health Risk Assessment

Table 4. Human health risks: Surface soil–Boom Landing
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Analyte	Mean Detected Value (µg/kg)	Maximum Detected Value (µg/kg)	Criteria Values: Soil Screening Level: Residential (µg/kg)	Criteria Values: Soil Screening Level: Industrial (µg/kg)	Scaled Risks (using mean detected): Residential: Cancer	Scaled Risks (using mean detected): Residential: Noncancer	Scaled Risks (using mean detected): Industrial: Cancer	Scaled Risks (using mean detected): Industrial: Noncancer	Scaled Risks (using maximum): Residential: Cancer	Scaled Risks (using maximum): Residential: Noncancer	Scaled Risks (using maximum): Industrial: Cancer	Scaled Risks (using maximum): Industrial: Noncancer
Polynuclear Aromatic Hydrocarbons (PAHs)												
Benz[a]anthracene	1,120	2,290	150 *c*	2,900 *c*	7E-06	--	4E-07	--	2E-05	--	8E-07	--
Benzo[a]pyrene	1,940	4,380	15 *c*	290 *c*	1E-04	--	7E-06	--	3E-04	--	2E-05	--
Benzo[b]fluoranthene	1,330	2,990	150 *c*	2,900 *c*	9E-06	--	5E-07	--	2E-05	--	1E-06	--
Benzo[k]fluoranthene	1,410	3,050	1,500 *c*	29,000 *c*	9E-07	--	5E-08	--	2E-06	--	1E-07	--
Chrysene	1,210	2,480	15,000 *c*	290,000 *c*	8E-08	--	4E-09	--	2E-07	--	9E-09	--
Dibenz[a,h]anthracene	366	814	15 *c*	290 *c*	2E-05	--	1E-06	--	5E-05	--	3E-06	--
Indeno[1,2,3-cd]pyrene	1,100	2,490	150 *c*	2,900 *c*	7E-06	--	4E-07	--	2E-05	--	9E-07	--
Summed Cancer Risk Estimate or Noncancer Hazard Index					**2E-04**	--	**9E-06**	--	**4E-04**	--	**2E-05**	--
Maximum single-chemical risk or hazard					1E-04	--	7E-06	--	3E-04	--	2E-05	--
Chemical associated with maximum risk or hazard					BaP	--	BaP	--	BaP	--	BaP	--

Notes: Predicted cancer risk calculated as: (Mean Detected Value × 1E-6) / Criteria OR (Maximum Detected Value × 1E-6) / Criteria.
For chemicals with toxicity information available for both cancer and noncancer endpoints, both a cancer risk and a noncancer hazard quotient were calculated.
BaP – benzo[a]pyrene
c – cancer; value corresponds to a cancer risk level of 1 in 1,000,000

Table 6. Human health risks: Subsurface soil–Boom Landing
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Analyte	Mean Detected Value (µg/kg)	Maximum Detected Value (µg/kg)	Criteria Values: Soil Screening Level: Residential (µg/kg)	Criteria Values: Soil Screening Level: Industrial (µg/kg)	Scaled Risks (using mean detected): Residential: Cancer	Scaled Risks (using mean detected): Residential: Noncancer	Scaled Risks (using mean detected): Industrial: Cancer	Scaled Risks (using mean detected): Industrial: Noncancer	Scaled Risks (using maximum): Residential: Cancer	Scaled Risks (using maximum): Residential: Noncancer	Scaled Risks (using maximum): Industrial: Cancer	Scaled Risks (using maximum): Industrial: Noncancer
Polynuclear Aromatic Hydrocarbons (PAHs)												
Benz[a]anthracene	39,000	324,000	150 *c*	2,900 *c*	3E-04	--	1E-05	--	2E-03	--	1E-04	--
Benzo[a]pyrene	18,000	116,000	15 *c*	290 *c*	1E-03	--	6E-05	--	8E-03	--	4E-04	--
Benzo[b]fluoranthene	27,000	213,000	150 *c*	2,900 *c*	2E-04	--	9E-06	--	1E-03	--	7E-05	--
Benzo[k]fluoranthene	28,000	213,000	1,500 *c*	29,000 *c*	2E-05	--	1E-06	--	1E-04	--	7E-06	--
Chrysene	39,000	325,000	15,000 *c*	290,000 *c*	3E-06	--	1E-07	--	2E-05	--	1E-06	--
Dibenz[a,h]anthracene	2,210	6,530	15 *c*	290 *c*	1E-04	--	8E-06	--	4E-04	--	2E-05	--
Indeno[1,2,3-cd]pyrene	4,100	20,100	150 *c*	2,900 *c*	3E-05	--	1E-06	--	1E-04	--	7E-06	--
1-Methylnaphthalene (c)	88,000	358,000	17,000 *c*	73,000 *c*	5E-06	--	1E-06	--	2E-05	--	5E-06	--
1-Methylnaphthalene (n)	88,000	358,000	4,100,000 *n*[a]	53,000,000 *n*[a]	--	0.02	--	0.002	--	0.09	--	0.007
2-Methylnaphthalene	84,000	318,000	230,000 *n*	3,000,000 *n*	--	0.4	--	0.03	--	1	--	0.1
Naphthalene (c)	127,000	510,000	3,800 *c*	17,000 *c*	3E-05	--	7E-06	--	1E-04	--	3E-05	--
Naphthalene (n)	127,000	510,000	130,000 *n*[a]	590,000 *n*[a]	--	1	--	0.2	--	4	--	0.9
Volatile Organic Compound (VOCs)												
Benzene (c)	23,300	49,000	1,200 *c*	5,100 *c*	2E-05	--	5E-06	--	4E-05	--	1E-05	--
Benzene (n)	23,300	49,000	82,000 *n*[a]	420,000 *n*[a]	--	0.3	--	0.06	--	0.6	--	0.1
Ethylbenzene (c)	94,000	288,000	5,800 *c*	25,000 *c*	2E-05	--	4E-06	--	5E-05	--	1E-05	--
Ethylbenzene (n)	94,000	288,000	3,400,000 *n*[a]	20,000,000 *n*[a]	--	0.03	--	0.005	--	0.08	--	0.01
Xylenes, total	262,000	900,000	580,000 *n*	2,500,000 *n*	--	0.5	--	0.1	--	2	--	0.4
Summed Cancer Risk Estimate or Noncancer Hazard Index					**2E-03**	2	1E-04	0.4	1E-02	8	7E-04	1
Maximum single-chemical risk or hazard					1E-03	1	6E-05	0.2	8E-03	4	4E-04	0.9
Chemical associated with maximum risk or hazard					BaP	Naphtha-lene	BaP	Naphtha-lene	BaP	Naphtha-lene	BaP	Naphtha-lene

Notes: Predicted cancer risk calculated as: (Mean Detected Value × 1E-6) / Criteria OR (Maximum Detected Value × 1E-6) / Criteria.
Predicted noncancer hazard calculated as: (Mean Detected Value × 1) / Criteria OR (Maximum Detected Value × 1) / Criteria).
For chemicals with toxicity information available for both cancer and noncancer endpoints, both a cancer risk and a noncancer hazard quotient were calculated.
BaP – benzo[a]pyrene
c – cancer; value corresponds to a cancer risk level of 1 in 1,000,000
n – noncancer; value corresponds to a target hazard quotient of 1
[a] Value is the noncancer screening level, used to calculate the noncancer hazard quotient.

Table 8. Human health risks: Surface soil–WWTP
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Analyt	Mean Detected Value (µg/kg)	Maximum Detected Value (µg/kg)	Criteria Values: Soil Screening Level: Residential (µg/kg)	Criteria Values: Soil Screening Level: Industrial (µg/kg)	Scaled Risks (using mean detected): Residential: Cancer	Scaled Risks (using mean detected): Residential: Noncancer	Scaled Risks (using mean detected): Industrial: Cancer	Scaled Risks (using mean detected): Industrial: Noncancer	Scaled Risks (using maximum detected): Residential: Cancer	Scaled Risks (using maximum detected): Residential: Noncancer	Scaled Risks (using maximum detected): Industrial: Cancer	Scaled Risks (using maximum detected): Industrial: Noncancer
Polynuclear Aromatic Hydrocarbons (PAHs)												
Benz[a]anthracene	1,770	5,850	150 *c*	2,900 *c*	1E-05	--	6E-07	--	4E-05	--	2E-06	--
Benzo[a]pyrene	2,230	6,690	15 *c*	290 *c*	1E-04	--	8E-06	--	4E-04	--	2E-05	--
Benzo[b]fluoranthene	1,790	5,040	150 *c*	2,900 *c*	1E-05	--	6E-07	--	3E-05	--	2E-06	--
Benzo[k]fluoranthene	1,810	5,270	1,500 *c*	29,000 *c*	1E-06	--	6E-08	--	4E-06	--	2E-07	--
Chrysene	1,930	5,890	15,000 *c*	290,000 *c*	1E-07	--	7E-09	--	4E-07	--	2E-08	--
Dibenz[a,h]anthracene	440	1,340	15 *c*	290 *c*	3E-05	--	2E-06	--	9E-05	--	5E-06	--
Indeno[1,2,3-cd]pyrene	1,330	3,870	150 *c*	2,900 *c*	9E-06	--	5E-07	--	3E-05	--	1E-06	--
Naphthalene (c)	277	648	3,800 *c*	17,000 *c*	--	--	--	--	--	--	--	--
Naphthalene (n)	277	648	130,000 *n*[a]	590,000 *n*[a]	--	2E-03	--	5E-04	--	5E-03	--	1E-03
Volatile Organic Compound (VOCs)												
Benzene (c)	480	1,620	1,200 *c*	5,100 *c*	4E-07	--	--	--	1E-06	--	--	--
Benzene (n)	480	1,620	82,000 *n*[a]	420,000 *n*[a]	--	6E-03	--	1E-03	--	2E-02	--	4E-03
Summed Cancer Risk Estimate or Noncancer Hazard Index					**2E-04**	**0.008**	**1E-05**	**0.002**	**6E-04**	**0.02**	**3E-05**	**0.005**
Maximum single-chemical risk or hazard					1E-04	0.006	8E-06	0.001	4E-04	0.02	2E-05	0.004
Chemical associated with maximum risk or hazard					BaP	Benzene	BaP	Benzene	BaP	Benzene	BaP	Benzene

Notes: Predicted cancer risk calculated as: (Mean Detected Value × 1E-6) / Criteria OR (Maximum Detected Value × 1E-6) / Criteria.
Predicted noncancer hazard calculated as: (Mean Detected Value × 1) / Criteria OR (Maximum Detected Value × 1) / Criteria).
For chemicals with toxicity information available for both cancer and noncancer endpoints, both a cancer risk and a noncancer hazard quotient were calculated.
BaP – benzo[a]pyrene
c – cancer; value corresponds to a cancer risk level of 1 in 1,000,000
n – noncancer; value corresponds to a target hazard quotient of 1
[a] Value is the noncancer screening level, used to calculate the noncancer hazard quotient.

Table 10. Human health risks: Subsurface soil–WWTP
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Analyte	Mean Detected Value (µg/kg)	Maximum Detected Value (µg/kg)	Criteria Values – Soil Screening Level – Residential (µg/kg)	Criteria Values – Soil Screening Level – Industrial (µg/kg)	Scaled Risks (using mean detected) – Residential – Cancer	Scaled Risks (using mean detected) – Residential – Noncancer	Scaled Risks (using mean detected) – Industrial – Cancer	Scaled Risks (using mean detected) – Industrial – Noncancer	Scaled Risks (using maximum) – Residential – Cancer	Scaled Risks (using maximum) – Residential – Noncancer	Scaled Risks (using maximum) – Industrial – Cancer	Scaled Risks (using maximum) – Industrial – Noncancer
Polynuclear Aromatic Hydrocarbons (PAHs)												
Benz[a]anthracene	79,000	634,000	150 *c*	2,900 *c*	5E-04	--	3E-05	--	4E-03	--	2E-04	--
Benzo[a]pyrene	45,000	317,000	15 *c*	290 *c*	3E-03	--	2E-04	--	2E-02	--	1E-03	--
Benzo[b]fluoranthene	85,000	837,000	150 *c*	2,900 *c*	6E-04	--	3E-05	--	6E-03	--	3E-04	--
Benzo[k]fluoranthene	85,000	837,000	1,500 *c*	29,000 *c*	6E-05	--	3E-06	--	6E-04	--	3E-05	--
Chrysene	65,000	525,000	15,000 *c*	290,000 *c*	4E-06	--	2E-07	--	4E-05	--	2E-06	--
Dibenz[a,h]anthracene	4,800	23,500	15 *c*	290 *c*	3E-04	--	2E-05	--	2E-03	--	8E-05	--
Indeno[1,2,3-cd]pyrene	8,600	47,100	150 *c*	2,900 *c*	6E-05	--	3E-06	--	3E-04	--	2E-05	--
1-Methylnaphthalene (c)	49,000	410,000	17,000 *c*	73,000 *c*	3E-06	--	7E-07	--	2E-05	--	6E-06	--
1-Methylnaphthalene (n)	49,000	410,000	4,100,000 *n*[a]	53,000,000 *n*[a]	--	1E-02	--	9E-04	--	1E-01	--	8E-03
2-Methylnaphthalene	50,000	529,000	230,000 *n*	3,000,000 *n*	--	2E-01	--	2E-02	--	2E+00	--	2E-01
Naphthalene (c)	110,000	1,630,000	3,800 *c*	17,000 *c*	3E-05	--	6E-06	--	4E-04	--	1E-04	--
Naphthalene (n)	110,000	1,630,000	130,000 *n*[a]	590,000 *n*[a]	--	8E-01	--	2E-01	--	1E+01	--	3E+00
Volatile Organic Compound (VOCs)												
Benzene (c)	480	2,650	1,200 *c*	5,100 *c*	4E-07	--	--	--	2E-06	--	--	--
Benzene (n)	480	2,650	82,000 *n*[a]	420,000 *n*[a]	--	6E-03	--	1E-03	--	3E-02	--	6E-03
Ethylbenzene (c)	1,600	11,000	5,800 *c*	25,000 *c*	3E-07	--	--	--	2E-06	--	--	--
Ethylbenzene (n)	1,600	11,000	3,400,000 *n*[a]	20,000,000 *n*[a]	--	5E-04	--	8E-05	--	3E-03	--	6E-04
Summed Cancer Risk Estimate or Noncancer Hazard Index					**5E-03**	**1**	**2E-04**	**0.2**	**3E-02**	**15**	**2E-03**	**3**
Maximum single-chemical risk or hazard					3E-03	0.8	2E-04	0.2	2E-02	13	1E-03	3
Chemical associated with maximum risk or hazard					BaP	Naphtha-lene	BaP	Naphtha-lene	BaP	Naphtha-lene	BaP	Naphtha-lene

Notes: Predicted cancer risk calculated as: (Mean Detected Value × 1E-6) / Criteria OR (Maximum Detected Value × 1E-6) / Criteria.
Predicted noncancer hazard calculated as: (Mean Detected Value × 1) / Criteria OR (Maximum Detected Value × 1) / Criteria).
For chemicals with toxicity information available for both cancer and noncancer endpoints, both a cancer risk and a noncancer hazard quotient were calculated.
BaP – benzo[a]pyrene
c – cancer; value corresponds to a cancer risk level of 1 in 1,000,000
n – noncancer; value corresponds to a target hazard quotient of 1

[a] Value is the noncancer screening level, used to calculate the noncancer hazard quotient.

Table 12. Human health screening: Soil vapor–industrial scenario
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Location	Building or Area / Under Building or Exterior	Date	Depth	Naphthalene (µg/m³)	Benzene (µg/m³)	Ethylbenzene (µg/m³)	Toluene (µg/m³)	1,2,4-Trimethyl benzene (µg/m³)	Xylenes, total (µg/m³)
		Soil Gas VISL, Industrial:		**3.6**	**16**	**49**	**220,000**	**310**	**4,400**
WWTP									
SG03SS	Vehicle bldg / underneath	8/7/2012	sub-slab	2.1 U	1.2 U	1.9 U	64.0	2.1 U	5.4 U
SG03SS	Vehicle bldg / underneath	5/1/2013	sub-slab	1.9 U	1.2 U	1.7 U	1.6	1.9 U	5.0 U
SG03I	Vehicle bldg / underneath	8/7/2012	5.5–6 ft	1.8 U	1.1 U	1.6 U	38.0	1.8 U	5.6
SG03I	Vehicle bldg / underneath	5/1/2013	5.5–6 ft	1.9 U	1.2 U	1.7 U	2.7	1.9 U	5.4
SG03D	Vehicle bldg / underneath	8/7/2012	9.5–10 ft	2.1 U	1.3 U	1.9 U	26.0	2.1 U	5.5 U
SG03D	Vehicle bldg / underneath	5/1/2013	9.5–10 ft	1.9 U	1.1 U	1.7 U	1.5	1.9 U	5.0 U
SG04SS	Vehicle bldg / underneath	8/7/2012	sub-slab	1.9 U	1.1 U	1.7 U	3.2	1.9 U	6.2
SG04SS	Vehicle bldg / underneath	5/1/2013	sub-slab	2.0 U	1.2 U	9.60	7.5	3.5	51.0
SG04I	Vehicle bldg / underneath	8/7/2012	5.5–6 ft	1.8 U	1.2	1.7 U	4.6	1.8 U	4.8 U
SG04I	Vehicle bldg / underneath	5/1/2013	5.5–6 ft	1.8 U	1.1 U	1.7 U	3.3	1.8 U	4.8 U
SG04D	Vehicle bldg / underneath	8/7/2012	9.5–10 ft	3.1	1.3	2.1	11.0	2.7	11.0
SG04D	Vehicle bldg / underneath	5/1/2013	9.5–10 ft	1.9 U	1.1 U	4.3	4.3	1.9 U	24.0
SG01	Service bldg / exterior	8/6/2012	3.5–4 ft	2.1 U	1.3 U	1.9 U	2.3	2.1 U	5.8
SG01	Service bldg / exterior	5/1/2013	3.5–4 ft	1.9 U	1.1 U	1.7 U	1.5 U	1.9 U	5.0 U
SG01	Service bldg / exterior	4/3/2014	3.5–4 ft	0.62	1.0 U	1.5 J	9.0	19.0	8.8
SG01	Service bldg / exterior	8/5/2014	3.5–4 ft	0.47 U	1.1 U	1.6 U	1.4 U	1.8 U	4.7 U
SG02	Service bldg / exterior	8/6/2012	4–4.5 ft	10.0	17.0	2.0	3.8	2.0 U	8.0
SG02	Service bldg / exterior	4/30/2013	4–4.5 ft	2.4 J	1.2 U	1.8 U	2.0	4.6	5.9
SG02	Service bldg / exterior	4/3/2014	4–4.5 ft	0.44	1.0 U	1.6 J	7.1	20.0	8.5
SG02	Service bldg / exterior	8/4/2014	4–4.5 ft	0.45	1.1 U	1.5 U	1.4	1.7 U	8.5
SG02A	Service bldg / exterior	8/6/2012	3–3.5 ft	4.4	1.2 U	1.8 U	4.9	2.0 U	5.2 U
SG02A	Service bldg / exterior	4/30/2013	3–3.5 ft	2.0 U	1.2 U	1.8 U	2.0	3.4	5.3
SG02A	Service bldg / exterior	4/3/2014	3–3.5 ft	1.4	1.1 U	1.6 U	1.5 U	1.8 U	4.7 U
SG02A	Service bldg / exterior	8/5/2014	3–3.5 ft	0.53 U	1.3 U	1.8 U	2.6	2.0 U	5.3 U
SG17SS	Service bldg / underneath	4/3/2014	sub-slab	1.6	1.1 U	3.4 J	13.0	60.0	18.0
SG17SS	Service bldg / underneath	8/5/2014	sub-slab	1.3	1.2 U	3.8	21.0	7.0	21.0
SG17D	Service bldg / underneath	4/3/2014	2–2.5 ft	2.0	1.1 U	3.5 J	12.0	45.0	18.0
SG17D	Service bldg / underneath	8/5/2014	2–2.5 ft	2.3	1.2 U	2.7	7.3	6.8	14.0
SG18SS	Service bldg / underneath	4/3/2014	sub-slab	1.9	4.5	13.0 J	51.0	110	58.0
SG18SS	Service bldg / underneath	8/4/2014	sub-slab	2.0	1.5	7.4	38.0	9.8	39.0
SG18D	Service bldg / underneath	4/3/2014	2–2.5 ft	1.7	2.2	6.9 J	28.0	76.0	34.0
SG18D	Service bldg / underneath	8/4/2014	2–2.5 ft	1.8	1.1 U	3.9	22.0	7.2	22.0
SG19SS	Service bldg / underneath	4/3/2014	sub-slab	2.1	1.3	4.5 J	14.0	59.0	23.0
SG19SS	Service bldg / underneath	8/5/2014	sub-slab	1.6	1.2 U	3.1	14.0	7.1	18.0

Table 12. Human health screening: Soil vapor–industrial scenario
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Location	Building or Area / Under Building or Exterior	Date	Depth	Naphthalene (µg/m³)	Benzene (µg/m³)	Ethylbenzene (µg/m³)	Toluene (µg/m³)	1,2,4-Trimethyl benzene (µg/m³)	Xylenes, total (µg/m³)
		Soil Gas VISL, Industrial:		**3.6**	**16**	**49**	**220,000**	**310**	**4,400**
SG07	Headwork bldg / exterior	8/6/2012	5.5–6 ft	2.6	1.7	1.7 U	9.0	2.9	6.0
SG07	Headwork bldg / exterior	5/1/2013	5.5–6 ft	1.9 U	1.2 U	1.7 U	2.6	1.9 U	5.0 U
SG05	Former slough / exterior	8/7/2012	6.5–7 ft	2,900	14,000	3,100	1,500	2,200	6,800
SG05	Former slough / exterior	4/30/2013	6.5–7 ft	660 J	3,300	710	400	440	1,600
SG06	W. of former slough / exterior	8/6/2012	5–5.5 ft	1.8 U	1.2	1.6 U	2.5	1.8 U	4.7 U
SG06	W. of former slough / exterior	4/30/2013	5–5.5 ft	1.8 U	1.1 U	1.6 U	3.5	3.1	7.1
SG06D	W. of former slough / exterior	8/6/2012	10–10.5 ft	2.0 U	1.2 U	1.8 U	1.6 U	2.0 U	5.1 U
SG06D	W. of former slough / exterior	4/30/2013	10–10.5 ft	2.1 U	1.2 U	1.9 U	1.7 U	2.1 U	5.4 U
SG08	E. of former slough / exterior	8/6/2012	4.5–5 ft	2.0 U	1.6	1.8 U	7.5	2.0 U	5.3 U
SG08	E. of former slough / exterior	4/30/2013	4.5–5 ft	2.1 U	1.3 U	2.7	53.0	2.5	13.0
SG09	W. of Ludington / exterior	8/7/2012	5.5–6 ft	2.9	1.1 U	1.7 U	4.6	3.1	6.4
SG09	W. of Ludington / exterior	5/1/2013	5.5–6 ft	1.9 U	1.2 U	5.3	1.8	1.9 U	37.0
SG09D	W. of Ludington / exterior	8/7/2012	11–11.5 ft	1.8 U	1.1 U	1.6 U	22.0	1.8 U	6.7
SG09D	W. of Ludington / exterior	5/1/2013	11–11.5 ft	2.0 U	1.2 U	3.7	6.3	2.0 U	21.0
SG14	Utility corridor / exterior	8/7/2012	4–4.5 ft	2.0 U	1.2 U	7.1	38.0	2.0 U	33.0
SG14	Utility corridor / exterior	4/30/2013	4–4.5 ft	2.2 J	1.1 U	4.1	220	4.1	22.0
SG15	Utility corridor / exterior	8/7/2012	3.5–4 ft	7.2	1.1 U	1.6 U	1.6	1.8 U	4.7 U
SG15	Utility corridor / exterior	4/30/2013	3.5–4 ft	2.0 U	1.2 U	1.8 U	1.6 U	2.0 U	9.0
SG16	Utility corridor / exterior	8/7/2012	3.5–4 ft	1.9 U	1.1 U	5.2	5.1	1.9 U	31.0
SG16	Utility corridor / exterior	4/30/2013	3.5–4 ft	3.3 J	1.2 U	1.7 U	3.7	5.0	7.0
Boom Landing: Exterior Samples									
SG10	Near MW311 / exterior	8/7/2012	6–6.5 ft	18.0	88.0	190	5,900	11.0	92.0
SG10	Near MW311 / exterior	5/1/2013	6–6.5 ft	2.0 U	1.2 U	1.8 U	4.4	2.0 U	5.2 U
SG11	Former slough / exterior	8/8/2012	3–3.5 ft	5.8	15.0	20.0	16.0	3.4	38.0
SG11	Former slough / exterior	5/1/2013	3–3.5 ft	2.4 J	1.2 U	4.0 J	3.9 J	2.0 U	6.2 J
SG12	Former slough / exterior	8/8/2012	3–3.5 ft	4.9	28.0	6.6	100	9.60	120
SG12	Former slough / exterior	5/1/2013	3–3.5 ft	2.0 U	1.2 U	1.8 U	1.6 U	2.0 U	5.2 U
SG13	W. of MW306 / exterior	8/7/2012	4–4.5 ft	2.1	2.1	1.9	12.0	1.8 U	4.6 U
SG13	W. of MW306 / exterior	5/1/2013	4–4.5 ft	1.9 U	1.2 U	1.7 U	2.6	1.9 U	5.0 U

Notes: Detected values that exceeded the screening criteria are boxed.
J - estimated
U - not detected; value represents detection limit
VISL - vapor intrusion screening level

Table 13. Human health risks: Soil vapor–industrial scenario
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Location	Building or Area / Under Building or Exterior	Date	Depth	Summed Cancer Risk	Summed Noncancer Hazard	Naphthalene, Cancer	Benzene, Cancer	Ethylbenzene, Cancer	Naphthalene, Noncancer	Benzene, Noncancer	Ethylbenzene, Noncancer	Toluene, Noncancer	1,2,4-Trimethyl benzene, Noncancer	Xylenes, total, Noncancer
Soil Vapor VISL, Industrial (µg/m³)						3.6 *c*	16 *c*	49 *c*	130 *n*	1,300 *n*	44,000 *n*	220,000 *n*	310 *n*	4,400 *n*
WWTP														
SG03SS	Vehicle bldg / underneath	8/7/2012	sub-slab	--	3E-04	--	--	--	--	--	--	3E-04	--	--
SG03SS	Vehicle bldg / underneath	5/1/2013	sub-slab	--	7E-06	--	--	--	--	--	--	7E-06	--	--
SG03I	Vehicle bldg / underneath	8/7/2012	5.5–6 ft	--	1E-03	--	--	--	--	--	--	2E-04	--	1E-03
SG03I	Vehicle bldg / underneath	5/1/2013	5.5–6 ft	--	1E-03	--	--	--	--	--	--	1E-05	--	1E-03
SG03D	Vehicle bldg / underneath	8/7/2012	9.5–10 ft	--	1E-04	--	--	--	--	--	--	1E-04	--	--
SG03D	Vehicle bldg / underneath	5/1/2013	9.5–10 ft	--	7E-06	--	--	--	--	--	--	7E-06	--	--
SG04SS	Vehicle bldg / underneath	8/7/2012	sub-slab	--	1E-03	--	--	--	--	--	--	1E-05	--	1E-03
SG04SS	Vehicle bldg / underneath	5/1/2013	sub-slab	2E-07	2E-02	--	--	2E-07	--	--	2E-04	3E-05	1E-02	1E-02
SG04I	Vehicle bldg / underneath	8/7/2012	5.5–6 ft	8E-08	9E-04	--	8E-08	--	--	9E-04	--	2E-05	--	--
SG04I	Vehicle bldg / underneath	5/1/2013	5.5–6 ft	--	2E-05	--	--	--	--	--	--	2E-05	--	--
SG04D	Vehicle bldg / underneath	8/7/2012	9.5–10 ft	1E-06	4E-02	9E-07	8E-08	4E-08	2E-02	1E-03	5E-05	5E-05	9E-03	3E-03
SG04D	Vehicle bldg / underneath	5/1/2013	9.5–10 ft	9E-08	6E-03	--	--	9E-08	--	--	1E-04	2E-05	--	5E-03
SG01	Service bldg / exterior	8/6/2012	3.5–4 ft	--	1E-03	--	--	--	--	--	--	1E-05	--	1E-03
SG01	Service bldg / exterior	5/1/2013	3.5–4 ft	--	--	--	--	--	--	--	--	--	--	--
SG01	Service bldg / exterior	4/3/2014	3.5–4 ft	2E-07	7E-02	2E-07	--	3E-08	5E-03	--	3E-05	4E-05	6E-02	2E-03
SG01	Service bldg / exterior	8/5/2014	3.5–4 ft	--	--	--	--	--	--	--	--	--	--	--
SG02	Service bldg / exterior	8/6/2012	4–4.5 ft	4E-06	9E-02	3E-06	1E-06	4E-08	8E-02	1E-02	5E-05	2E-05	--	2E-03
SG02	Service bldg / exterior	4/30/2013	4–4.5 ft	7E-07	3E-02	7E-07	--	--	2E-02	--	--	9E-06	1E-02	1E-03
SG02	Service bldg / exterior	4/3/2014	4–4.5 ft	2E-07	7E-02	1E-07	--	3E-08	3E-03	--	4E-05	3E-05	6E-02	2E-03
SG02	Service bldg / exterior	8/4/2014	4–4.5 ft	1E-07	6E-03	1E-07	--	--	3E-03	--	--	6E-06	--	2E-03
SG02A	Service bldg / exterior	8/6/2012	3–3.5 ft	1E-06	3E-02	1E-06	--	--	3E-02	--	--	2E-05	--	--
SG02A	Service bldg / exterior	4/30/2013	3–3.5 ft	--	1E-02	--	--	--	--	--	--	9E-06	1E-02	1E-03
SG02A	Service bldg / exterior	4/3/2014	3–3.5 ft	4E-07	1E-02	4E-07	--	--	1E-02	--	--	--	--	--
SG02A	Service bldg / exterior	8/5/2014	3–3.5 ft	--	1E-05	--	--	--	--	--	--	1E-05	--	--
SG17SS	Service bldg / underneath	4/3/2014	sub-slab	5E-07	2E-01	4E-07	--	7E-08	1E-02	--	8E-05	6E-05	2E-01	4E-03
SG17SS	Service bldg / underneath	8/5/2014	sub-slab	4E-07	4E-02	4E-07	--	8E-08	1E-02	--	9E-05	1E-04	2E-02	5E-03
SG17D	Service bldg / underneath	4/3/2014	2–2.5 ft	6E-07	2E-01	6E-07	--	7E-08	2E-02	--	8E-05	5E-05	1E-01	4E-03
SG17D	Service bldg / underneath	8/5/2014	2–2.5 ft	7E-07	4E-02	6E-07	--	6E-08	2E-02	--	6E-05	3E-05	2E-02	3E-03
SG18SS	Service bldg / underneath	4/3/2014	sub-slab	1E-06	4E-01	5E-07	3E-07	3E-07	1E-02	3E-03	3E-04	2E-04	4E-01	1E-02
SG18SS	Service bldg / underneath	8/4/2014	sub-slab	8E-07	6E-02	6E-07	9E-08	2E-07	2E-02	1E-03	2E-04	2E-04	3E-02	9E-03
SG18D	Service bldg / underneath	4/3/2014	2–2.5 ft	8E-07	3E-01	5E-07	1E-07	1E-07	1E-02	2E-03	2E-04	1E-04	2E-01	8E-03
SG18D	Service bldg / underneath	8/4/2014	2–2.5 ft	6E-07	4E-02	5E-07	--	6E-08	1E-02	--	9E-05	1E-04	2E-02	5E-03
SG19SS	Service bldg / underneath	4/3/2014	sub-slab	8E-07	2E-01	6E-07	8E-08	9E-08	2E-02	1E-03	1E-04	6E-05	2E-01	5E-03
SG19SS	Service bldg / underneath	8/5/2014	sub-slab	5E-07	4E-02	4E-07	--	6E-08	1E-02	--	7E-05	6E-05	2E-02	4E-03
SG07	Headwork bldg / exterior	8/6/2012	5.5–6 ft	8E-07	3E-02	7E-07	1E-07	--	2E-02	1E-03	--	4E-05	9E-03	1E-03
SG07	Headwork bldg / exterior	5/1/2013	5.5–6 ft	--	1E-05	--	--	--	--	--	--	1E-05	--	--
SG05	Former slough / exterior	8/7/2012	6.5–7 ft	2E-03	40	8E-04	9E-04	6E-05	2E+01	1E+01	7E-02	7E-03	7E+00	2E+00
SG05	Former slough / exterior	4/30/2013	6.5–7 ft	4E-04	9	2E-04	2E-04	1E-05	5E+00	3E+00	2E-02	2E-03	1E+00	4E-01
SG06	W. of former slough / exterior	8/6/2012	5–5.5 ft	8E-08	9E-04	--	8E-08	--	--	9E-04	--	1E-05	--	--
SG06	W. of former slough / exterior	4/30/2013	5–5.5 ft	--	1E-02	--	--	--	--	--	--	2E-05	1E-02	2E-03
SG06D	W. of former slough / exterior	8/6/2012	10–10.5 ft	--	--	--	--	--	--	--	--	--	--	--
SG06D	W. of former slough / exterior	4/30/2013	10–10.5 ft	--	--	--	--	--	--	--	--	--	--	--

Table 13. Human health risks: Soil vapor–industrial scenario
Marinette Former MGP Site
Marinette, Wisconsin
Baseline Risk Assessment (Revision 2)

Location	Building or Area / Under Building or Exterior	Date	Depth	Summed Cancer Risk	Summed Noncancer Hazard	Naphthalene, Cancer	Benzene, Cancer	Ethylbenzene, Cancer	Naphthalene, Noncancer	Benzene, Noncancer	Ethylbenzene, Noncancer	Toluene, Noncancer	1,2,4-Trimethyl benzene, Noncancer	Xylenes, total, Noncancer
SG08	E. of former slough / exterior	8/6/2012	4.5–5 ft	1E-07	1E-03	--	1E-07	--	--	1E-03	--	3E-05	--	--
SG08	E. of former slough / exterior	4/30/2013	4.5–5 ft	6E-08	1E-02	--	--	6E-08	--	--	6E-05	2E-04	8E-03	3E-03
SG09	W. of Ludington / exterior	8/7/2012	5.5–6 ft	8E-07	3E-02	8E-07	--	--	2E-02	--	--	2E-05	1E-02	1E-03
SG09	W. of Ludington / exterior	5/1/2013	5.5–6 ft	1E-07	9E-03	--	--	1E-07	--	--	1E-04	8E-06	--	8E-03
SG09D	W. of Ludington / exterior	8/7/2012	11–11.5 ft	--	2E-03	--	--	--	--	--	--	1E-04	--	2E-03
SG09D	W. of Ludington / exterior	5/1/2013	11–11.5 ft	8E-08	5E-03	--	--	8E-08	--	--	8E-05	3E-05	--	5E-03
SG14	Utility corridor / exterior	8/7/2012	4–4.5 ft	1E-07	8E-03	--	--	1E-07	--	--	2E-04	2E-04	--	8E-03
SG14	Utility corridor / exterior	4/30/2013	4–4.5 ft	7E-07	4E-02	6E-07	--	8E-08	2E-02	--	9E-05	1E-03	1E-02	5E-03
SG15	Utility corridor / exterior	8/7/2012	3.5–4 ft	2E-06	6E-02	2E-06	--	--	6E-02	--	--	7E-06	--	--
SG15	Utility corridor / exterior	4/30/2013	3.5–4 ft	--	2E-03	--	--	--	--	--	--	--	--	2E-03
SG16	Utility corridor / exterior	8/7/2012	3.5–4 ft	1E-07	7E-03	--	--	1E-07	--	--	1E-04	2E-05	--	7E-03
SG16	Utility corridor / exterior	4/30/2013	3.5–4 ft	9E-07	4E-02	9E-07	--	--	3E-02	--	--	2E-05	2E-02	2E-03
Boom Landing: Exterior Samples														
SG10	Near MW311 / exterior	8/7/2012	6–6.5 ft	1E-05	3E-01	5E-06	6E-06	4E-06	1E-01	7E-02	4E-03	3E-02	4E-02	2E-02
SG10	Near MW311 / exterior	5/1/2013	6–6.5 ft	--	2E-05	--	--	--	--	--	--	2E-05	--	--
SG11	Former slough / exterior	8/8/2012	3–3.5 ft	3E-06	8E-02	2E-06	9E-07	4E-07	4E-02	1E-02	5E-04	7E-05	1E-02	9E-03
SG11	Former slough / exterior	5/1/2013	3–3.5 ft	7E-07	2E-02	7E-07	--	8E-08	2E-02	--	9E-05	2E-05	--	1E-03
SG12	Former slough / exterior	8/8/2012	3–3.5 ft	3E-06	1E-01	1E-06	2E-06	1E-07	4E-02	2E-02	2E-04	5E-04	3E-02	3E-02
SG12	Former slough / exterior	5/1/2013	3–3.5 ft	--	--	--	--	--	--	--	--	--	--	--
SG13	W. of MW306 / exterior	8/7/2012	4–4.5 ft	8E-07	2E-02	6E-07	1E-07	4E-08	2E-02	2E-03	4E-05	5E-05	--	--
SG13	W. of MW306 / exterior	5/1/2013	4–4.5 ft	--	1E-05	--	--	--	--	--	--	1E-05	--	--

Notes:
Risks are calculated for all samples and all chemicals regardless of whether the observed concentration exceeded a screening level, and are rounded to one significant figure.
For any chemicals with both a carcinogenic and a noncarcinogenic effect, both cancer risks and noncancer hazards are calculated.
Predicted cancer risk calculated as: (Detected Value × 1E-6) / Criteria. Predicted noncancer hazard calculated as: (Detected Value × 1) / Criteria
Highlighted values exceed a summed cancer risk of 1×10^{-4} or a noncancer hazard index of 1.
-- – chemical was not detected
c – cancer; value corresponds to a cancer risk level of 1 in 1,000,000
n – noncancer; value corresponds to a target hazard quotient of 1
VISL – vapor intrusion screening level

WISCONSIN PUBLIC SERVICE CORPORATION
MARINETTE MANUFACTURED GAS PLANT
SUPERFUND ALTERNATIVE SITE

APPENDIX C

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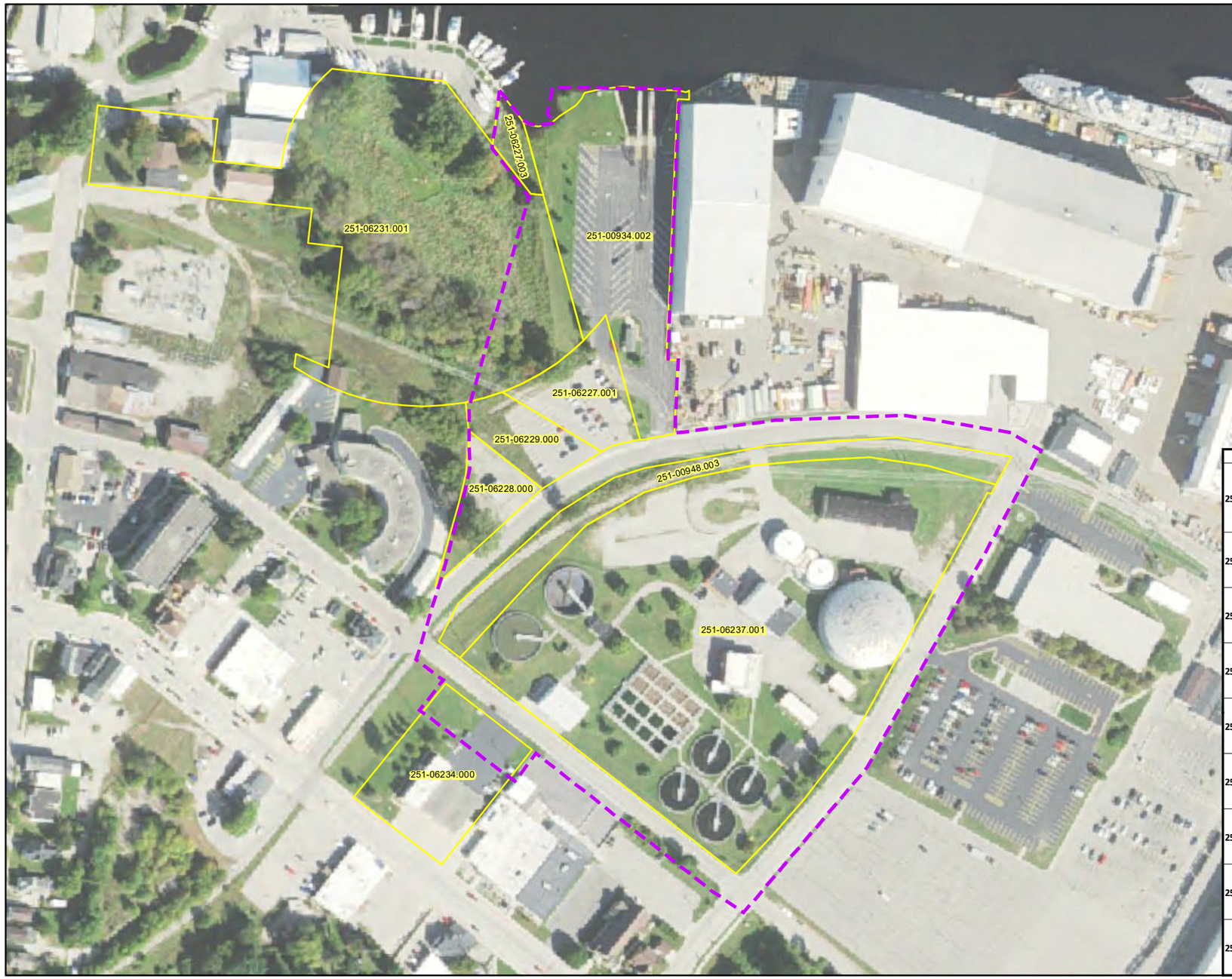

Parcel ID	Primary Owner Name	Full Physical Address	Full Mailing Address	Appreviated Legal Description
251-00948.003	CANADIAN NATIONAL NKA	N/A	PROPERTY TAX - 8TH FL - PO BOX 8100 DOWNTOWN STATION - MONTREAL QUEBEC CANADA H3C 3N4, 00000-0000	RAILROAD IN S6 T30N R24E EX 4031J45 683133(HWY) 11.4 Ac.
251-06231.001	MARINETTE CENTRAL BROADCASTING	400 WELLS ST, MARINETTE, WI	C/O FRANK J LAUERMAN III 383 STATE ST MARINETTE, WI 54143-1223	SUBD OF S6 T30N R24E PRT LOT 19 COM W/L 423'N SW COR; E180' N140' W180' TO W 5.86 Ac.
251-06234.000	MARINETTE CITY OF	1450 MAIN ST, MARINETTE, WI	1905 HALL AVE MARINETTE, WI 54143-1716	SUBD OF S6 T30N R24E PRT LOTS 19 & 22 COM E/L ICC TRK #22 376.1'SE & 71.3'NE W 0.43 Ac.
251-06237.001	MARINETTE CITY OF	1603 ELY ST, MARINETTE, WI	1905 HALL AVE MARINETTE, WI 54143-1716	SUBD S6 T30N R24E PRTS LOTS 22 & 25 LYG N OF LUDINGTON ST W OF ELY ST & 8.6 Ac.
251-06229.000	MARINETTE CITY OF	501 MANN ST, MARINETTE, WI	1905 HALL AVE MARINETTE, WI 54143-1716	SUBD OF S6 T30N R24E PRT LOT 19 & 22 COM NE COR 249D369 376.1'SE & 324.5'NE 0.46 Ac.
251-06227.001	MARINETTE CITY OF	N/A	1905 HALL AVE MARINETTE, WI 54143-1716	SUBD OF S6 T30N R24E LOT 19 & PRT VAC WELLS ST IN 1632J37 EX 99D423 111D612 0.61 Ac.
251-06227.003	MARINETTE CITY OF	N/A	1905 HALL AVE MARINETTE, WI 54143-1716	SUBD OF S6 T30N R24E OUTLOT 1 CSM 3513 IN V23 PG 307 BNG PRT LOT 19 0.17 Ac.
251-00934.002	MARINETTE CITY OF	N/A	1905 HALL AVE MARINETTE, WI 54143-1716	PRT LOT 19 & PRT GOVT LOT 5 S6 T30 N R24E COM N/L MANN ST 1228.26'N 745.8'SW 1120.68' 2.31 Ac.
251-06228.000	WISCONSIN PUBLIC SERVICE CORP	N/A	ATTN REAL ESTATE DEPT PO BOX 19001 GREEN BAY, WI 54307-9001	SUBD OF S6 T30N R24E PRT LOTS 19 & 22 COM E/L ICC TRK #22 376.1'SE & 71.3'NE W 0.43 Ac.

LEGEND

APPROXIMATE EXTENT OF UPLAND SITE

PARCEL BOUNDARY (MARINETTE COUNTY, ACCESSED 7/16/2018)

FORMER MARINETTE MGP SITE
WISCONSIN PUBLIC SERVICE CORPORATION
MARINETTE, WISCONSIN

PARCEL ID MAP

N

0 25 50 100 150 200
Feet

FILE_NO. 67979
DATE 7/16/2018

O'BRIEN & GERE ENGINEERS, INC.

Y:\Mapping\Projects\6\67979\MXD\Figure1_ParcelI_ID_Map.mxd

WISCONSIN PUBLIC SERVICE CORPORATION
MARINETTE MANUFACTURED GAS PLANT
SUPERFUND ALTERNATIVE SITE

APPENDIX D

APPENDIX D

STATEMENT OF WORK

FOR THE REMEDIAL ACTION AT THE WISCONSIN PUBLIC SERVICE CORPORATION MARINETTE FORMER MANUFACTURED GAS PLANT SUPERFUND ALTERNATIVE SITE, MARINETTE, WISCONSIN

EPA REGION 5

TABLE OF CONTENTS

1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW.

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendant's (SD's) responsibilities for community involvement.
- Section 3 (Remedial Action) sets forth requirements regarding the completion of the RA, including primary deliverables related to completion of the RA.
- Section 4 (Reporting) sets forth SD's reporting obligations.
- Section 5 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SD's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 6 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- Section 7 (State Participation) addresses State participation.
- Section 8 (Technical Assistance Plan) addresses the procedure for TAP .
- Section 9 (References) provides a list of references, including URLs.

1.3 The Scope of the Remedy includes the following actions described the ROD:

1. Excavation and off-site disposal of accessible subsurface source material located within the Boom Landing Zone

a. Complete predesign investigation to further define the horizontal and vertical extent of subsurface contamination in the areas of previously identified MGP-source material and provide waste characterization sampling.
b. Obtain access agreements and demolish/remove parking lot, fish house, utilities, and existing concrete and asphalt pavements in the Boom Landing Zone.
c. Install temporary shoring to support deeper excavations.
d. Install a temporary dewatering system to lower the water table within the excavation footprint.
e. Excavate non-affected overburden soil and stockpile on-site for use as post-excavation backfill.
f. Excavate MGP-source material and transport to Subtitle D Landfill.
g. Backfill excavation to surrounding grades with granular backfill and stockpiled overburden material.
h. Restore Site to previous conditions.

2. ***Excavation and off-site disposal of accessible subsurface source material located within the Waste Water Treatment Plant (WWTP) Zone***
    a. Complete predesign investigation and waste characterization sampling to further define horizontal and vertical extent of subsurface contamination in the areas of previous identified MGP-source material and provide waste characterization sampling.
    b. Obtain access agreement from the City of Marinette (City).
    c. Install temporary shoring to support deeper excavations.
    d. Install a temporary dewatering system to lower the water table within the excavation footprint.
    e. Excavate non-affected overburden soil and stockpile on-site for use as post- excavation backfill.
    f. Excavate accessible MGP-source material to maximize principal threat waste removal while minimizing impact to surrounding infrastructure and transport to Subtitle D Landfill.
    g. Backfill excavation to surrounding grades with granular backfill and stockpiled overburden material.
    h. Restore Site to previous conditions.

3. ***Horizontal Engineered Surface Barriers at Boom Landing and WWTP Zones***
    a. Monitor and maintain existing engineered surface barriers including paved parking lots and paved roadways.
    b. In predesign, further investigate the horizontal extent of surficial soil containing contaminants of concern (COCs) above PRGs.
    c. Mitigate potential exposure by excavating accessible surficial soil containing COCs above PRGs, backfilling the two feet depth of excavated areas with 18 inches of clean fill and six inches of clean topsoil. Alternative barrier approaches, including gravel and/or asphalt, will be evaluated during the remedial design (RD) phase.

4. ***In-situ Groundwater Treatment***
    a. Perform bench-scale testing of Site soils and groundwater, if necessary, with varying types and percentages of reagents to determine the most effective approach to address COCs in groundwater.
    b. One-time placement of reagent into the exposed saturated zone resulting from excavation of Boom Landing and WWTP Zones.
    c. Groundwater monitoring until groundwater PRGs are achieved.

5. ***Sediment Monitoring***
    a. Regular effectiveness monitoring of the Reactive Core Mat (RCM) to check for ebullition or migration of MGP-source materials that were not addressed during the 2012 removal action.
    b. Monitor the 160 cubic yards (CY) of dredge inventory that remained after the NTCRA to ensure at least six inches of clean sand remain over those areas

with MGP-residuals remaining, and that the 0-6 inch zone remains be1ow remedial action levels (RALs).

6. ***Institutional Controls (ICs) for Soil, Soil Gas, Groundwater, and Sediment*** Boundaries for ICs will be based on delineation of MGP COCs on affected parcels to PRGs. Wisconsin DNR's Geographic Information System (GIS) Registry will be used to implement institutional controls; however, alternate continuing obligation mechanisms, including deed restrictions, may be considered as part of the remedial design. Requirements, limitations, or conditions relating to restrictions of sites listed on the Wisconsin DNR GIS database are required to be met by all property owners [Wisconsin State Statutes § 292.12(5)]. As a result, the statute requires that the GIS database conditions be maintained for a property, regardless of changes in ownership. A violation of Section 292.12 is enforceable under Wisconsin Statutes §§ 292.93 and 292.99.

1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (CD), have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term "Paragraph" or "¶" means a paragraph of the SOW, and the term "Section" means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

(a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP, including, if applicable, any Technical Assistance Grant (TAG), any use of the Technical Assistance Services for Communities (TASC) contract, and/or any Technical Assistance Plan (TAP).

(b) If requested by EPA, SD shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment, such as the City of Marinette. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's

oversight. Upon EPA's request, SD shall establish a community information repository at or near the Site to house one copy of the administrative record.

(c) **SD's CI Coordinator**. If requested by EPA, SD shall, within 15 days, designate and notify EPA of SD's Community Involvement Coordinator (SD's CI Coordinator). SD may hire a contractor for this purpose. SD's notice must include the name, title, and qualifications of the SD's CI Coordinator. SD's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

3. REMEDIAL ACTION

3.1 RA Work Plan. SD shall submit a RA Work Plan (RAWP) for EPA approval that includes:

(a) A proposed RA Construction Schedule;

(b) An updated health and safety plan that covers activities during the RA; and

(c) Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

3.2 Meetings and Inspections

(a) **Preconstruction Conference**. SD shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). SD shall prepare minutes of the conference and shall distribute the minutes to all Parties.

(b) **Periodic Meetings**. During the construction portion of the RA (RA Construction), SD shall meet regularly with EPA, and others as directed or determined by EPA, to discuss construction issues. SD shall distribute an agenda and list of attendees to all Parties prior to each meeting. SD shall prepare minutes of the meetings and shall distribute the minutes to all Parties.

(c) **Inspections**

(1) EPA or its representative shall conduct periodic inspections of or have an on-site presence during the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.

(2) Upon notification by EPA of any deficiencies in the RA Construction, SD shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SD shall comply with any schedule provided by EPA in its notice of deficiency.

3.3 Emergency Response and Reporting

(a) **Emergency Response and Reporting**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SD shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 3.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

(b) **Release Reporting**. Upon the occurrence of any event during performance of the Work that SD is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD shall immediately notify the authorized EPA officer orally.

(c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 3.3(a) and ¶ 3.3(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA Emergency Response Unit, Region 5 if neither EPA Project Coordinator is available.

(d) For any event covered by ¶ 3.3(a) and ¶ 3.3(b), SD shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.

(e) The reporting requirements under ¶ 3.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

3.4 Off-Site Shipments

(a) SD may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SD will be deemed to be in

compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

(b) SD may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to the initial shipment to a receiving facility, SD provides notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SD also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. SD shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

(c) SD may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

3.5 RA Construction Completion

(a) For purposes of this ¶ 3.5, "RA Construction" comprises, for any RA that involves the construction and operation of a system to achieve Performance Standards (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.

(b) **Inspection of Constructed Remedy**. SD shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must be attended by SD and EPA and/or their representatives. A re-inspection must be conducted if requested by EPA.

(c) **RA Report**. Following the completion of inspection, SD shall submit an "RA Report" requesting EPA's determination that RA Construction has been completed. The RA Report must: (1) include statements by a registered professional engineer and by SD's Project Coordinator that construction of the

system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011); and (5) be certified in accordance with ¶ 5.5 (Certification).

(d) If EPA determines that RA Construction is not complete, EPA shall so notify SD. EPA's notice must include a description of, and schedule for, the activities that SD must perform to complete RA Construction. EPA's notice may include a schedule for completion of such activities or may require SD to submit a proposed schedule for EPA approval. SD shall perform all activities described in the EPA notice in accordance with the schedule.

(e) If EPA determines, based on the initial or any subsequent RA Report, that RA Construction is complete, EPA shall so notify SD.

3.6 Certification of RA Completion

(a) **RA Completion Inspection**. The RA is "Complete" for purposes of this ¶ 3.6 when it has been fully performed and the Performance Standards have been achieved. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by SD and EPA and/or their representatives.

(b) **RA Report/Monitoring Report**. Following the inspection, SD shall submit a RA Report/Monitoring Report to EPA requesting EPA's Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011); (4) contain monitoring data to demonstrate that all physical work is done on-site ; and (5) be certified in accordance with ¶ 5.5 (Certification).

(c) If EPA concludes that the RA is not Complete, EPA shall so notify SD. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require SD to submit a schedule for EPA approval. SD shall perform all activities described in the notice in accordance with the schedule.

(d) If EPA concludes, based on the initial or any subsequent RA Report/Monitoring Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to SD. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section XV of the CD (Covenants

by Plaintiffs). Certification of RA Completion will not affect SD's remaining obligations under the CD.

3.7 Periodic Review Support Plan (PRSP). SD shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SD shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

3.8 Certification of Work Completion

(a) **Work Completion Inspection**. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SD and EPA and/or their representatives.

(b) **Work Completion Report**. Following the inspection, SD shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Work, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 5.5 (Certification). If the RA Report/Monitoring Report submitted under ¶ 3.6(b) includes all elements required under this ¶ 3.8(b), then the RA Report/Monitoring Report suffices to satisfy all requirements under this ¶ 3.8(b).

(c) If EPA concludes that the Work is not complete, EPA shall so notify SD. EPA's notice must include a description of the activities that SD must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SD to submit specifications and a schedule for EPA approval. SD shall perform all activities described in the notice or in the EPA-approved specifications and schedule.

(d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SD. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) XIX (Retention of Records), and XXVIII (Access to Information) of the CD; and (3) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD.

4. REPORTING

4.1 Progress Reports. Commencing with the first month following EPA's approval of the Final Remedial Design and until EPA approves the RA Construction Completion, SD shall submit progress reports to EPA on a monthly basis, or as otherwise requested by

EPA. The reports must cover all activities that took place during the prior reporting period, including:

(a) The actions that have been taken toward achieving compliance with the CD;

(b) A summary of all results of sampling, tests, and all other data received or generated by SD;

(c) A description of all deliverables that SD submitted to EPA;

(d) A description of activities relating to RA Construction that are scheduled for the next six weeks;

(e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;

(f) A description of any modifications to the work plans or other schedules that SD has proposed or that have been approved by EPA; and

(g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next six weeks.

4.2 **Notice of Progress Report Schedule Changes**. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 4.1(d), changes, SD shall notify EPA of such change at least 7 days before performance of the activity.

5. DELIVERABLES

5.1 **Applicability**. SD shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. Deliverables requiring EPA review and approval include the Health and Safety Plan (review only), Emergency Response Plan, Field Sampling plan, Quality Assurance Project Plan, Site-Wide Monitoring Plan, Construction Quality Assurance/Quality Control Plan, Transportation and Off-Site Disposal; Plan, O&M Plan, O&M Manual, Institutional Control Implementation and Assurance Plan and Periodic Review Support Plan. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 5.2 (In Writing) through 5.4 (Technical Specifications) apply to all deliverables. Paragraph 5.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 5.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

5.2 **In Writing**. As provided in ¶ 93 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.

5.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RA Schedule, as applicable. SD shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 5.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD shall also provide EPA with paper copies of such exhibits.

5.4 Technical Specifications

(a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(b) Spatial data, including spatially-referenced data and geospatial data should be submitted; (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html for any further available guidance on attribute identification and naming.

(d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Site.

5.5 Certification. All deliverables, which include the Remedial Action Completion Report and Work Completion Report that require compliance with this ¶ 5.5 must be signed by the SD's Project Coordinator, or other responsible official of SD, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

5.6 Approval of Deliverables

(a) **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

(b) **Resubmissions**. Upon receipt of a notice of disapproval under ¶ 5.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 5.6(a), SD shall, within 21 calendar days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring SD to correct the deficiencies; or (5) any combination of the foregoing.

(c) **Implementation**. Upon approval, approval upon conditions, or modification by EPA under ¶ 5.6(a) (Initial Submissions) or ¶ 5.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SD shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 5.6(a) or ¶ 5.6(b) does not relieve SD of any liability for stipulated penalties under Section XIV (Stipulated Penalties) of the CD.

5.7 Supporting Deliverables. Upon Date of Notice of RD Completion, all supporting deliverables submitted under and incorporated into the Remedial Design AOC shall be incorporated into the CD. Following EPA's notice that SD has completed its obligations under the 2018 AOC, SD shall update each of these supporting deliverables or develop new ones as necessary or appropriate during the course of the Work, and/or as requested

by EPA. If warranted by changes to Site conditions and/or technical modifications to the remedy, SD shall update or develop the deliverables, which may include those listed below, in accordance with all applicable regulations, guidances, and policies (see Section 9 (References).

(a) **Health and Safety Plan**. The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SD shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

(b) **Emergency Response Plan**. The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:

(1) Name of the person or entity responsible for responding in the event of an emergency incident;

(2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;

(3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;

(4) Notification activities in accordance with ¶ 3.3(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and

(5) A description of all necessary actions to ensure compliance with Paragraph 11 (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.

(c) **Field Sampling Plan**. The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).

(d) **Quality Assurance Project Plan**. The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*., QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A though 900C (Mar. 2005). The QAPP also must include procedures:

(1) To ensure that EPA and the State and their authorized representative have reasonable access to laboratories used by SD in implementing the CD (SD's Labs);

(2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;

(3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;

(4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;

(5) For SD to provide EPA and the State with notice at least 28 days prior to any sample collection activity;

(6) For SD to provide split samples and/or duplicate samples to EPA and the State upon request;

(7) For EPA and the State to take any additional samples that they deem necessary;

(8) For EPA and the State to provide to SD, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and

(9) For SD to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the CD.

(e) **Site Wide Monitoring Plan**. The purpose of the Site Wide Monitoring Plan (SWMP) is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the RA; to obtain information regarding contamination levels to determine whether Performance Standards (PS) are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:

(1) Description of the environmental media to be monitored;

(2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;

(3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;

(4) Description of verification sampling procedures;

(5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and

(6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement).

(f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP)**. The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

(1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;

(2) Describe the PS required to be met to achieve Completion of the RA;

(3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;

(4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;

(5) Describe industry standards and technical specifications used in implementing the CQA/QCP;

(6) Describe procedures for tracking construction deficiencies from identification through corrective action;

(7) Describe procedures for documenting all CQA/QCP activities; and

(8) Describe procedures for retention of documents and for final storage of documents.

(g) **O&M Plan**. The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SD shall develop the O&M Plan in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001). The O&M Plan must include the following additional requirements:

(1) Description of Performance Standards (PS) required to be met to implement the ROD;

(2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;

(3) **O&M Reporting**. Description of records and reports that will be generated during O&M, such as daily operating logs (if any), laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;

(4) Description of corrective action in case of systems failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and

(5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.

(h) **O&M Manual**. The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SD shall develop the O&M Manual in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001).

(i) **Institutional Controls Implementation and Assurance Plan**. The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SD shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:

(1) Locations of recorded real property interests (e.g., Wisconsin GIS registry, easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and

(2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

6. SCHEDULES

6.1 Applicability and Revisions. All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RA Schedules set forth below. SD may submit proposed revised RA Schedules for EPA approval. Upon EPA's approval, the revised RA Schedules supersede the RA Schedules set forth below, and any previously-approved RA Schedules. Based on implementation concerns, EPA, after consultation with the state, may modify the schedule of deliverables.

6.2 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Award RA contract		60 days after EPA Notice of Authorization to Proceed with RA
2	RAWP	3.1	90 days after EPA Notice of Authorization to Proceed with RA
3	Pre-Construction Conference	3.2(a)	30 days after Approval of RAWP
4	Start of Construction		45 days after Approval of RAWP and obtaining access to third party parcels
5	Completion of Construction		
6	Pre-final Inspection	3.5(b)	30 days after completion of construction
7	Pre-final Inspection Report	3.5(c)	60 days after completion of Pre-final Inspection
8	Final Inspection		30 days after Completion of Work identified in Pre-final Inspection Report
9	RA Report	3.5(c)	60 days after Final Inspection
10	Monitoring Report	3.6(b)	
11	Work Completion Report	3.8(b)	
	Periodic Review Support Plan	3.7	Five years after Start of RA Construction

7. STATE PARTICIPATION

7.1 Copies. SD shall, at any time it sends a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.

7.2 Review and Comment. The State will have a reasonable opportunity for review and comment prior to:

(a) Any EPA approval or disapproval under ¶ 5.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and

(b) Any approval or disapproval of the Construction Phase under ¶ 3.5 (RA Construction Completion), any disapproval of, or Certification of RA Completion under ¶ 3.6 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under ¶ 3.8 (Certification of Work Completion).

7.3 Oversight. Upon consulting with EPA prior to planned activity, the State may conduct field oversight of RA activities and operation of the remediation system at its discretion or at the request of EPA. Field oversight done by the State may include, but is not limited to, observing ongoing work, reviewing plans and modifications thereto, collection of samples (e.g split sampling) and analysis of samples collected.

8. TECHNICAL ASSISTANCE PLAN

SD's Responsibilities for Technical Assistance

8.1 If EPA requests, SD shall arrange for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand Site cleanup issues (specifically, to interpret and comment on Site-related documents developed under this SOW); and (ii) share this information with others in the community. The technical advisor(s) will be independent from the SD. SD's TAP assistance will be limited to $50,000, except as provided in ¶1.1.4.3, and will end when EPA issues the Certification of Work Completion. SD shall implement this requirement under a Technical Assistance Plan (TAP).

(a) If EPA requests, SD shall cooperate with EPA in soliciting interest from community groups regarding a TAP at the Site. If more than one community group expresses an interest in a TAP, SD shall cooperate with EPA in encouraging the groups to submit a single, joint application for a TAP.

(b) If EPA requests, SD shall, within 30 days, submit a proposed TAP for EPA approval. The TAP must describe the SD's plans for the qualified community group to receive independent technical assistance. The TAP must include the following elements:

.1 For SD to arrange for publication of a notice in local media explaining how interested community groups may submit an application for a TAP. If EPA has already received a Letter of Intent to apply for a TAP from a community group, the notice should explain how other interested groups may also try to combine efforts with the LOI group or submit their own applications, by a reasonable specified deadline;

.2 For SD to review the application(s) received and determine the eligibility of the community group(s). The proposed TAP must include eligibility criteria as follows:

.2.1 A community group is eligible if it is: (i) comprised of people who are affected by the release or threatened release at the Site; (ii) and able to demonstrate its ability to adequately and responsibly manage TAP-related responsibilities.

.2.2 A community group is ineligible if it is: (i) a potentially responsible party (PRP) at the Site, represents such a PRP, or receives money or services from a PRP (other than through the TAP); (ii) affiliated with a national organization; (iii) an academic institution; (iv) a political subdivision; (v) a tribal government; or (vi) a group established or presently sustained by any of the above

ineligible entities; or (vii) a group in which any of the above ineligible entities is represented.

.3 For SD to notify EPA of its determination on eligibility of the applicant group(s) to ensure that the determination is consistent with the SOW before notifying the group(s);

.4 If more than one community group submits a timely application, for SD to review each application and evaluate each application based on the following elements:

.4.1 The extent to which the group is representative of those persons affected by the Site; and

.4.2 The effectiveness of the group's proposed system for managing TAP-related responsibilities, including its plans for working with its technical advisor and for sharing Site-related information with other members of the community.

.5 For SD to document its evaluation of, and its selection of, a qualified community group, and to brief EPA regarding its evaluation process and choice. EPA may review SD's evaluation process to determine whether the process satisfactorily follows the criteria in ¶1.1.3.4. TAP assistance may be awarded to only one qualified group at a time;

.6 For SD to notify all applicant(s) about SD's decision;

.7 For SD to designate a person (TAP Coordinator) to be their primary contact with the selected community group;

.8 A description of SD's plans to implement the requirements of ¶1.1.4 (Agreement with Selected Community Group); and

.9 For SD to submit quarterly progress reports regarding the implementation of the TAP.

(b) Agreement with Selected Community Group

.1 SD shall negotiate an agreement with the selected community group that specifies the duties of SD and the community group. The agreement must specify the activities that may be reimbursed under the TAP and the activities that may not be reimbursed under the TAP. The list of allowable activities must be consistent with 40 C.F.R. § 35.4070 (e.g., obtaining the services of an advisor to help the group understand the nature of the environmental and public health hazards at the Site and the various stages of the response action, and communicating Site information to others in the community). The list of non-allowable activities must be consistent

with 40 C.F.R. § 35.4075 (e.g., activities related to litigation or political lobbying).

.2 The agreement must provide that SD's review of the Community Group's recommended choice for Technical Advisor will be limited, consistent with 40 C.F.R. § 35.4190 and § 35.4195, to criteria such as whether the advisor has relevant knowledge, academic training, and relevant experience as well as the ability to translate technical information into terms the community can understand.

.3 The agreement must provide that the Community Group is eligible for additional TAP assistance, if it can demonstrate that it has effectively managed its TAP responsibilities to date, and that at least three of the following ten factors are satisfied:

.3.1 EPA expects that more than eight years (beginning with the initiation of the RD) will pass before construction completion will be achieved;

.3.2 EPA requires treatability studies or evaluation of new and innovative technologies;

.3.3 EPA reopens the ROD;

.3.4 The public health assessment (or related activities) for the Site indicates the need for further health investigations and/or health-related activities;

.3.5 After SD's selection of the Community Group for the TAP, EPA designates additional Operable Units at the Site;

.3.6 EPA issues an Explanation of Significant Differences for the ROD;

.3.7 After SD's selection of the Community Group, a legislative or regulatory change results in significant new Site information;

.3.8 Significant public concern about the Site exists, as evidenced, e.g., by relatively large turnout at meetings, the need for multiple meetings, the need for numerous copies of documents to inform community members, etc.;

.3.9 Any other factor that, in EPA's judgment, indicates that the Site is unusually complex; or

.3.10 A RI/FS costing at least $ 2 million was performed at the Site.

.4 SD is entitled to retain any unobligated TAP funds upon EPA's Certification of Work Completion.

.5 SD shall submit a draft of the proposed agreement to EPA for its comments.

9. REFERENCES

9.1 The following regulations and guidance documents, among others, apply to corresponding aspects of the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:

(a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).

(b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).

(c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).

(d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).

(e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr.1990).

(f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).

(g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).

(h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).

(i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).

(j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).

(k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).

(l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).

(m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).

(n) Operation and Maintenance in the Superfund Program, OSWER 9200.1-37FS, EPA/540/F-01/004 (May 2001).

(o) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).

(p) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).

(q) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).

(r) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).

(s) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A though 900C (Mar. 2005).

(t) Superfund Community Involvement Handbook, EPA/540/K-05/003 (Apr. 2005).

(u) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).

(v) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).

(w) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).

(x) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).

(y) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).

(z) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), available at http://www.epa.gov/geospatial/policies.html and http://www.epa.gov/geospatial/docs/National_Geospatial_Data_Policy.pdf.

(aa) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).

(bb) Principles for Greener Cleanups (Aug. 2009), available at http://www.epa.gov/oswer/greenercleanups/.

(cc) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).

(dd) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).

(ee) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).

(ff) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).

(gg) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).

(hh) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, www.csinet.org/masterformat.

(ii) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach , OSWER 9200.2-125 (Sep. 2012)

(jj) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).

(kk) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).

(ll) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), http://www.epaosc.org/_HealthSafetyManual/manual-index.htm.

(mm) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).

(nn) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).

(oo) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance http://www.epa.gov/superfund/policy/index.htm

Test Methods Collections http://www.epa.gov/fem/methcollectns.htm

9.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after SD receives notification from EPA of the modification, amendment, or replacement.

ATTACHMENT B

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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May 13, 2020

The Honorable William C. Griesbach
U.S. District Court
Eastern District of Wisconsin
Green Bay Division
Green Bay, Wisconsin 54305

Re: *United States of America and State of Wisconsin v. WPSC*
Case No. 20-cv-00733

Dear Judge Griesbach,

I am one of the attorneys representing the State of Wisconsin in the matter of *United States of America and State of Wisconsin v. Wisconsin Public Service Corporation* (20-cv-00733). This matter arises under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. § 9601, *et seq*., (Superfund law) and involves environmental contamination at a former WPSC manufactured gas plant site in Marinette, Wisconsin. The parties reached a compromise agreement prior to the initiation of litigation and seek judicial approval through entry of a Consent Decree.

I write to inform you that the State submits this proposed consent decree without first obtaining the approval of the Wisconsin Joint Committee on Finance ("JFC") under Wis. Stat. § 165.08(1).[1] The State believes it has authority to submit

[1] Wis. Stat. § 165.08(1) provides, in pertinent part: "[a]ny *civil action prosecuted* by the (Wisconsin Department of Justice) . . . may be compromised or discontinued with the approval of an intervenor under s. 803.09(2m) or, if there is no intervenor, by submission of a proposed plan to the joint committee on finance for the approval of the committee. The compromise or discontinuance may occur only if the joint committee on finance approves the proposed plan." (emphasis added).

the stipulated consent decree without legislative approval because the statute, by its terms, does not apply when, before any action is prosecuted, the State enters a compromise agreement that resolves the parties' dispute and then seeks judicial approval of that agreement through the filing of a consent decree.

Some members of the Legislature interpret the statute differently. Counsel for certain members of the Legislature expressed disagreement with the State's position in a prior enforcement matter.[2] In that matter, the State submitted an agreed-upon consent judgment to the court and also submitted a motion seeking a declaration that JFC approval was not required.[3] Though it was provided with notice of the motion, the JFC did not intervene, object, or otherwise take a position on the motion. Rather, counsel for four legislative members sent a letter to the circuit court.[4] They also did not seek to intervene.

The court denied the State's motion because JFC did not seek to participate: "[t]he issue on which the declaration is sought is not justiciable as between the parties to this action."[5] However, the court approved and entered the parties' proposed Consent Judgment.

While Wis. Stat. § 165.08 does not apply to pre-suit resolutions such as this one, members of the Legislature and JFC itself have an opportunity to comment on the proposed agreement by participating in the 30-day comment period under 42 U.S.C. § 9622(d)(2). After that statutory comment period has run, the co-plaintiffs will address any comments that are received, including those from any legislative members or body.

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[2] *See State of Wisconsin v. Direct Checks Unlimited, Inc.* (Dane Cty. Cir. Ct. Case No. 2019CX000001).

[3] A copy of the State's Motion for Declaration is included with this letter and is marked as Ex. 1.

[4] *See* January 28, 2020 letter from Attorney Misha Tsetlin on behalf of Robin Vos, in his official capacity as Wisconsin Assembly Speaker, Roger Roth, in his official capacity as Wisconsin Senate President, Jim Steineke, in his official capacity as Wisconsin Assembly Majority Leader, and Scott Fitzgerald, in his official capacity as Wisconsin Senate Majority Leader. A copy is included with this letter and marked as Ex. 2.

[5] A copy of the court's decision is included with this letter and marked as Ex. 3.

Thank you for your consideration. If you have any questions or if anything further is required, please contact me.

Sincerely,

Electronically signed by:

s/Lorraine C. Stoltzfus

Lorraine C. Stoltzfus
Assistant Attorney General

LCS:cjh

cc: Attorney Anne Sappenfield, Wisconsin Legislative Council

EXHIBIT 1

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 20-CX-_____
Complex Forfeiture: 30109

DIRECT CHECKS
UNLIMITED SALES, INC.,

Defendant.

MOTION FOR DECLARATION THAT WIS. STAT. § 165.08(1) DOES NOT APPLY TO THE STATE OF WISCONSIN ENTERING INTO A PRE-FILING STIPULATED JUDGMENT

INTRODUCTION

This is a consumer protection case that was resolved before the complaint was filed. Defendant Direct Checks Unlimited Sales, Inc. ("Direct Checks") sells personal checks directly to consumers. The State of Wisconsin's (the "State") complaint alleges that Direct Checks billed Wisconsin consumers more than the consumer agreed to pay for ordered checks. To resolve the State's claims, Direct Checks has agreed to implement practices to prevent future overbilling, and to pay a total of $852,201.46 in restitution, forfeitures, and costs. By filing the proposed consent judgment, the parties seek judicial approval—and enforceability—of their agreement.

One issue must be resolved, however, before the Court approves the proposed consent judgment: whether the plaintiff State of Wisconsin has authority to enter the

consent judgment without first obtaining approval from the Wisconsin Legislature's Joint Committee on Finance (JCF) under Wis. Stat. § 165.08(1), which requires JCF's approval before the State "compromise[s] or discontinue[s]" "[a]ny civil action prosecuted by the department [of justice]."

The State believes that it has authority to enter the consent judgment without legislative approval because the statute, by its terms, does not apply when the State enters an agreement that resolves the parties' dispute before any action is prosecuted, and then seeks judicial approval of that agreement through a consent judgment. But because there is some uncertainty about the statute's applicability, the State seeks a declaration that it has authority to enter the consent decree at issue here. Such a declaration would be well within the Court's authority to protect the finality of its judgments, which could be at risk of a collateral attack by JCF if the State proceeds with the amended consent decree without JCF approval.

Defendant Direct Checks takes no position on this motion. The Wisconsin Department of Justice (DOJ) intends to provide this motion and a copy of the stipulated judgment to JCF's counsel, after filing.

STATEMENT OF THE CASE

I. Statutory background.

Under a new statute passed at the end of 2018 in an extraordinary session, 2017 Wis. Act 369, DOJ must obtain approval from JCF before it settles certain civil actions. Generally, in cases to which the statute applies, DOJ must submit proposed settlement plans to JCF, and the state entity that DOJ represents can only proceed

with settlement if JCF affirmatively approves the proposed plan. In other words, DOJ and its state clients lack authority to enter settlements without legislative consent, if the case falls under the new statute.

The statutory provision at issue here specifically provides that:

> Any civil action prosecuted by the department [i.e. the Wisconsin Department of Justice (DOJ)] by direction of any officer, department, board, or commission, or any civil action prosecuted by the department on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued with the approval of an intervenor under s. 803.09 (2m) or, if there is no intervenor, by submission of a proposed plan to the joint committee on finance for the approval of the committee. The compromise or discontinuance may occur only if the joint committee on finance approves the proposed plan.

Wis. Stat. § 165.08(1). In short, when DOJ "prosecute[s]" a "civil action" at the direction or request of the enumerated state entities, DOJ must receive permission from JCF before "compromis[ing] or discontinu[ing]" the civil action. *Id*. The statute does not mention agreements entered outside the scope of a civil action that DOJ is prosecuting.

II. Procedural background.

Direct Checks is an out-of-state printing company that makes personal checks and other personalized products. In Wisconsin, Direct Checks solicits business by mailing advertisements to consumers and placing ads in newspapers. Direct Checks primarily advertises two separate offers: (1) their best offer for "first-time customers" only ("Best Offer"); and (2) a lesser offer for "returning customers" ("Lesser Offer"). The Best Offer advertisements did not conspicuously disclose that it is for first-time customers only, nor did it disclose that "returning customers" would be charged a higher rate if they submitted an order in response to the advertisements.

The State's complaint against Direct Checks relates to the company's handling of orders from the Best Offer advertisement by consumers that the company deemed to be ineligible "returning customers." In these situations, the company's practice was to accept the consumers' submitted payment and mail the ordered checks, but then bill the consumer additional money that the consumer had not agreed to pay. The price Direct Checks billed these consumers was substantially higher than their standard advertised offer for "returning customers." If these consumers did not pay the additional billed amount, Direct Checks threatened to refer the consumer to a collection agency and report the "debt" to a credit bureau.

Following complaints by Wisconsin consumers, the State began investigating Direct Checks' business practices. Specifically, Wis. Stat. § 100.195 prohibits sellers from unfairly billing consumers for goods at a price higher than previously agreed upon. Wis. Stat. § 100.195(2)(b). The statute provides for injunctive relief for violations, as well as restitution to consumers who suffer a pecuniary loss. Wis. Stat. § 100.195(5m)(c). Each violation is also subject to a forfeiture of not less than $100 nor more than $10,000. Wis. Stat. § 100.195(5m)(d).

Following negotiation between the State and Direct Checks, the parties entered into the proposed consent judgment, which requires Direct Checks to improve the disclosures on their advertisements and to stop billing consumers more than they agreed to pay. The agreement also requires Direct Checks to pay a total of $752,201.46, including $185,177.39 in restitution to consumers; $550,000.00 in

forfeitures and fees; and $17,024.07 to the State for costs incurred in the investigation.

The parties' agreement was fully executed on January 9, 2020. On January 9, 2020, the State filed the complaint in this matter along with the proposed consent judgment and a stipulated waiver of service.

ARGUMENT

I. The State can file a previously executed consent judgment without seeking approval from JCF under Wis. Stat. § 165.08(1).

A. Legal standard.

Interpreting the scope of Wis. Stat. § 165.08(1) "begins with the language of the statute. If the meaning of the statute is plain, [a court] ordinarily stop[s] the inquiry." *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.* "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.* ¶ 46.

B. The plain language of Wis. Stat. § 165.08(1) does not apply to the parties' pre-filing agreement.

The State may seek entry of the consent judgment without triggering Wis. Stat. § 165.08(1)'s legislative approval requirement. The statute applies only when DOJ seeks to "compromise[ ] or discontinue[ ]" a "civil action prosecuted

by the department." Wis. Stat. § 165.08(1) Legislative approval therefore is not required for two reasons: (1) the parties' pre-filing agreement did not even arise in a "civil action," and the parties' agreement occurred when no court case existed; and (2) neither the pre-filing agreement nor the subsequent request for judicial approval amounts to "prosecut[ion]" by DOJ. *Id.*

First, Wis. Stat. § 165.08(1) does not apply to cases—like this one—in which the dispute is already resolved before a "civil action" is filed. Although that statute does not define the term "civil action," its meaning is well-established in civil procedure: "A civil action . . . is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court . . . ." Wis. Stat. § 801.02(1). Similarly, Black's Law Dictionary ("Black's") describes an "action" as a "civil . . . judicial proceeding." *Action*, Black's Law Dictionary (11th ed. 2019). By its terms, the legislative approval statute applies only to an existing "civil action prosecuted by the department." *See* Wis. Stat. § 165.08(1). Because the agreement here was negotiated, finalized, and signed before any judicial proceeding existed, legislative approval is not required for this pre-filing agreement.

Similarly, because no civil action even existed at the time of the pre-filing agreement, that agreement could neither "compromise" nor "discontinue" a civil action. *See* Wis. Stat. § 165.08(1). Black's defines "compromise" as entering into "[a]n agreement between two or more persons to settle matters in dispute between them; an agreement for the settlement of a real or supposed claim in which each party

surrenders something in concession to the other." *Compromise*, Black's Law Dictionary (11th ed. 2019). By referring to resolving matters "in dispute" between the parties but not necessarily *in litigation*, the term encompasses resolution of disputed matters either within a civil action or outside of litigation. *See id.* But in Wis. Stat. § 165.08(1), the Legislature limited the universe of "compromise[s]" for which approval would be required to those occurring within an existing civil action; the statute says nothing about "compromise[s]" outside of litigation.

Common sense supports this reading. If pre-filing compromises were subject to legislative approval, JCF would need to be consulted on a wide variety of quintessentially discretionary decisions by DOJ, such as whether DOJ would seek the full range of forfeitures from one co-conspirator or instead "compromise" by securing the co-conspirator's cooperation and testimony in exchange for lesser forfeitures. *Cf., e.g.*, *Return of Prop. in State v. Jones*, 226 Wis. 2d 565, 583, 585, 594 N.W.2d 738 (1999) (recognizing that prosecutors "have discretion in determining whether or not to prosecute and in selecting which of several related crimes he or she wishes to charge," and that prosecutors are "answerable to the people of the state and not to the courts or the legislature as to the manner in which he or she exercises prosecutorial discretion" (quoting *State v. Annala*, 168 Wis. 2d 453, 473, 484 N.W.2d 138 (1992)). Wisconsin Stat. § 165.08(1) has no bearing on such pre-filing compromises.

Indeed, reading the statute to distinguish between pre-filing agreements and consent judgments would lead to absurd results. By its terms, the statute does not

prevent the State from entering into a resolution with another party if that agreement is never formalized by court approval. It would be absurd to then read the statute to preclude the same resolution from being approved through a consent judgment. This absurdity is particularly acute when considering that the primary purpose of a consent judgment is to afford the parties—and the public—the mutual benefit of an additional mechanism by which to enforce the agreement. "Compromise" under Wis. Stat. § 165.08(1) cannot be read to apply to this situation.

The statute's limitation on "discontinu[ing]" a civil action is equally inapplicable. *See* Wis. Stat. § 165.08(1). "Discontinuance" refers to "[t]he termination of a lawsuit by the plaintiff; a voluntary dismissal or nonsuit." *Discontinuance*, Black's Law Dictionary (11th ed. 2019). The term thus refers to a one-sided decision by the plaintiff to stop prosecuting a "lawsuit"; indeed, the definition refers to a "judgment of discontinuance," which "dismiss[es] a plaintiff's action based on interruption in the proceedings occasioned by the plaintiff's *failure to continue the suit* at the appointed time or times." *Id.*; *Judgment*, Black's Law Dictionary (11th ed. 2019) (emphasis added).

The proposed consent judgment here is nothing like a "discontinuance." For one, as noted, when the parties entered the agreement no "civil action" existed, so the agreement necessarily could not have "terminat[ed] . . . a lawsuit" or civil action, as required for "discontinuance." *Discontinuance*, Black's Law Dictionary (11th ed. 2019). Second, even aside from the existence of any civil action, the parties' agreement was not a one-sided act by the plaintiff "fail[ing] to continue the

suit." *See id.*; *see also Judgment*, Black's Law Dictionary (11th ed. 2019). The proposed consent judgment was the result of mutual agreement by the parties to resolve their dispute short of litigation.

Second, even considering the existence of a "civil action" now, the proposed consent judgment would not trigger Wis. Stat. § 165.08(1) because the State's request for judicial approval of the agreement does not constitute DOJ "prosecuting" a civil action as the statute uses that term. While the statute leaves "prosecute" undefined, Black's defines it as to "commence and carry out (a legal action)." *Prosecute*, Black's Law Dictionary (11th ed. 2019). Similarly, courts recognize that a plaintiff's case may be dismissed for "failure to prosecute" when he or she does not "proceed with prosecution of the action within a reasonable period of time." *In re Estate of Short*, 2010 WI App 108, ¶ 9, 328 Wis. 2d 162, 789 N.W.2d 585 (quoting *Marshall-Wisconsin Co. v. Juneau Square Corp.*, 139 Wis. 2d 112, 136–37, 406 N.W.2d 764 (1987)). Thus, both the dictionary definition of "prosecute" and related caselaw indicate that the term refers to one party's unilateral efforts in bringing and continuing to litigate a case against another.

By contrast, here the parties jointly seek the Court's approval of an existing contractual agreement, with the goal of affording all the parties an additional avenue of enforcement (i.e., contempt) for their out-of-court agreement. This type of joint request is not "prosecution" by DOJ.

This plain, commonsense reading of Wis. Stat. § 165.08(1) also comports with the common understanding of how consent decrees function. Fundamentally, a

consent decree is a contract between the parties, enforceable by contempt once approved by a court. *See Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 522 (1986). "Indeed, it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all." *See id.* at 522. And it is "the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Id.*

A court's approval of parties' preexisting agreement therefore adds a layer of solemnity and enforceability to the parties' already enforceable agreement. *See* Anthony DiSarro, *Six Decrees of Separation: Settlement Agreements and Consent Orders in Federal Civil Litigation*, 60 Am. U. L. Rev. 275, 277 (2010) ("The presence of an injunction in the consent decree makes non-compliance with the settlement terms contempt of court. By contrast, failure to comply with a settlement agreement is simply a breach of contract."). But the request for approval of that preexisting agreement is not itself a "prosecution" and thus does not trigger Wis. Stat. § 165.08(1)'s approval requirement. *Cf. Bradley v. United States*, 410 U.S. 605, 609 (1973) ("The term 'prosecution' clearly imports a beginning and an end.").

*****

Wisconsin Stat. § 165.08(1) limits only DOJ's resolution of existing "civil action[s] prosecuted by the department." The Legislature's chosen language does not apply here, and no approval under Wis. Stat. § 165.08(1) is required.[1]

CONCLUSION

The State of Wisconsin respectfully requests a declaration that it validly entered into the proposed consent judgment in this matter without seeking legislative approval under Wis. Stat. § 165.08(1).

Dated this 10th day of January, 2020.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Robert B. Bresette
ROBERT B. BRESETTE
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[1] In separate litigation, four legislators filed a petition for an original action in the Wisconsin Supreme Court, challenging the Attorney General's ability to enter into pre-litigation resolutions like the agreement at issue here. *See Vos v. Kaul*, Case No. 2019AP1389-OA (Wis. Sup. Ct.). The court has not acted on the petition, which has been held in abeyance since early September.

In another case, DOJ is challenging the constitutionality of Wis. Stat. § 165.08(1)'s legislative-approval requirement as a violation of the separation of powers between the executive and legislative branches. *See SEIU v. Vos*, Case No. 2019AP0614 (Wis. Sup. Ct.).

Nothing in this brief is intended to concede the validity of those aspects of Wis. Stat. § 165.08(1) challenged in the *SEIU* case, or to waive any argument in either case.

CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the State's Motion for Declaration that Wis. Stat. § 165.08(1) Does Not Apply to the State of Wisconsin Entering Into a Pre-Filing Stipulated Judgment with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

EXHIBIT 2

Troutman Sanders LLP
One North Wacker Drive, Suite 2905
Chicago, IL 60606

troutman.com

troutman sanders

Misha Tseytlin
misha.tseytlin@troutman.com

January 28, 2020

VIA FIRST-CLASS MAIL

Honorable Susan Crawford
Branch 1
Dane County Courthouse
215 S. Hamilton St.
Madison, WI 53703-3292

Re: State of Wisconsin vs. Direct Checks Unlimited Sales, Inc., 2020CX000001

Dear Judge Crawford:

I am counsel for Legislative Petitioners* in *Vos, et. al. v Kaul*, No. 19AP1389-OA, a case the Attorney General briefly mentions in Footnote 1 of his Motion For Declaration That Wis. Stat. § 165.08(1) Does Not Apply (the "Motion"). I write to provide the Court with more context about *Vos* and the ongoing dispute between the Attorney General and the Legislature.

On August 1, 2019, Legislative Petitioners filed a Petition For Original Action, asking the Supreme Court of Wisconsin to adjudicate the legality of the Attorney General's ongoing violation of three aspects of 2017 Act 369. On September 12, 2019, the Supreme Court held this Petition in abeyance pending further order of the Court and *Service Employees International Union (SEIU), at. al. v. Vos, et. al.*, Nos. 19AP614-LV, 19AP622, a case involving a facial challenge to certain provisions in Act 369 and 2017 Act 370. The Attorney General and Legislative Petitioners are all defendants in *SEIU* but have taken opposing positions on the Plaintiffs' challenge to Sections 26 and 30 of Act 369. The Supreme Court held oral argument in *SEIU* on October 21, 2019, after expedited briefing, and a final decision could come at any time.

The Attorney General's Motion in the present case asks this Court to decide incorrectly one of the three legal issues that Legislative Petitioners in *Vos* have asked the Supreme Court to adjudicate. In particular, as Legislative Petitioners explained in their Memorandum In Support Of Petition For Original Action, attached as Exhibit A, Section 26 of Act 369 provides that "[a]ny *civil action* prosecuted by the [D]epartment [of Justice] . . . may be *compromised* or discontinued" only with the Legislature's approval, as intervenor; or, if there is no intervenor, with the approval of the Joint Committee on Finance ("JFC"). Wis. Stat. § 165.08(1) (emphasis added). A "civil action" is "[a]n action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation," *Action*,

* Robin Vos, in his official capacity as Wisconsin Assembly Speaker, Roger Roth, in his official capacity as Wisconsin Senate President, Jim Steineke, in his official capacity as Wisconsin Assembly Majority Leader, and Scott Fitzgerald, in his official capacity as Wisconsin Senate Majority Leader.

troutman sanders

Black's Law Dictionary (11th ed. 2019), and "prosecute" means "[t]o commence and carry out (a legal action)." *Prosecute*, Black's Law Dictionary (11th ed. 2019). So when the Attorney General commences and carries out a civil action by choosing to file a civil complaint, he must thereafter seek and obtain legislative approval under Section 26 if he wishes to compromise that action, such as through the entry of a consent decree. Nothing in Section 26's text alters or eliminates these obligations simply because there has been some manner of pre-filing negotiations between the parties. *See generally* Ex. A, at 21–24.

The Attorney General's request that this Court decide an issue that the Supreme Court may well soon take up is also unnecessary. If the Attorney General submits to JFC a proposed settlement plan for approval, along with basic information about any proposed settlement—such as the names of the parties involved in the dispute, the facts underlying the dispute, any relevant briefing, and the basic terms of the proposed settlement—JFC will consider approving that settlement in a timely manner. Notably, in the only case where the Attorney General submitted a proposed settlement plan along with this basic information to JFC under Section 26, *Wisconsin Department of Agriculture, Trade, and Consumer Protection v. Hampton Avenue Group, LLC*, 2017CX000001 (Milwaukee Cty. Cir. Ct.), JFC promptly approved the settlement unanimously. The Attorney General could submit such a request for approval to JFC, here, without prejudice to later making the same arguments he puts forward in his Motion, including to the Supreme Court.

Sincerely,

/s/ Misha Tseytlin

Misha Tseytlin

cc: Robert B. Bresette
Michael D. Leffel

EXHIBIT A

SUPREME COURT OF WISCONSIN

No. _____

ROBIN VOS, IN HIS OFFICIAL CAPACITY AS WISCONSIN ASSEMBLY SPEAKER, ROGER ROTH, IN HIS OFFICIAL CAPACITY AS WISCONSIN SENATE PRESIDENT, JIM STEINEKE, IN HIS OFFICIAL CAPACITY AS WISCONSIN ASSEMBLY MAJORITY LEADER AND SCOTT FITZGERALD, IN HIS OFFICIAL CAPACITY AS WISCONSIN SENATE MAJORITY LEADER,
PETITIONERS,
V.
JOSH KAUL, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF WISCONSIN,
RESPONDENT.

MEMORANDUM IN SUPPORT OF PETITION FOR ORIGINAL ACTION

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ISSUES PRESENTED BY THE CONTROVERSY

1. Whether Section 26 of Act 369 applies to "[a]ny civil action prosecuted by" the Attorney General,[1] including when the Attorney General has engaged in some manner of pre-lawsuit negotiations.

2. Whether Sections 26 and 30 of Act 369 apply when the Attorney General "compromise[s]" the State's litigation interests, regardless of whether the Attorney General obtains concessions from opposing parties in exchange for the compromise.

3. Whether Section 27 of Act 369 requires the Attorney General to deposit "all settlement funds into the general fund," so that those funds are available for general revenue, and is not limited by Section 26 in any respect.

[1] This Memorandum refers to statutes that mention the "Department of Justice" as "Attorney General." *See Burkes v. Klauser*, 185 Wis. 2d 308, 322, 517 N.W.2d 503 (1994) ("[t]he Attorney General is head of the Department of Justice").

INTRODUCTION

Soon after this Court stayed the Circuit Court's injunction blocking Sections 26 and 30 of 2017 Act 369, *see Serv. Emps. Int'l Union, Local I v. Vos*, Nos. 2019AP614-LV, 2019AP622 (hereinafter after "*SEIU*"), App. 1, the Attorney General told the Legislature that he intended to nullify a significant portion of these very provisions. First, as to Section 26, he would not permit the Legislature to have a seat at the table when the Attorney General settles lawsuits that he files, where there has been some manner of pre-lawsuit negotiations. Second, as to both Sections 26 and 30, he would often not give the Legislature a seat at the table when he compromises the defense of Wisconsin laws unless he also obtains some concession from opposing parties in exchange. Third, as to Section 27, which requires him to deposit "all settlement funds into the general fund," he would treat this provision as only applying to the narrow subset of cases to which he believes Section 26 applies.

The Legislature, speaking through the same leaders that are named defendants in *SEIU*,[2] respectfully requests that this Court resolve the purely legal question of whether the Attorney General can effectively nullify a significant portion of these provisions' operation. In *SEIU*, this Court recognized the importance of Sections 26 and 30 by taking jurisdiction over a challenge to those provisions' constitutionality, on its own motion. This case presents a natural complement to *SEIU*: in *SEIU*, the Attorney General asks this Court to invalidate Sections 26 and 30, whereas in this case, the Attorney General is nullifying a significant portion of those provisions' operations and using that interpretation to narrow the scope of Section 27, as well, thereby unlawfully seizing large sums of money that belong to the people of this State. And, as in *SEIU*, only this Court can resolve the purely legal disputes here.

Given these considerations, if this Court grants this Petition, this Court may wish to consolidate this case for oral

[2] In *SEIU*, this Court correctly explained that these legislative leaders, referred to there as "Legislative Defendants," "represented" the Legislature. App. 57.

argument and decision with *SEIU*. To give this Court that option, the Legislature would be willing to consent to this Court treating this Memorandum as the Legislature's Opening Brief on the merits, thereby permitting this Court the choice of concluding briefing in this case in advance of the October 21, 2019 oral argument in *SEIU*.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

If this Court grants the Petition for Original Action, that would indicate that this case is appropriate for argument and publication.

STATEMENT OF THE CASE

A. The Relevant Statutory Provisions In Act 369

In December 2018, the Legislature enacted 2017 Wisconsin Act 369, hereinafter Act 369.

As relevant here, Section 26 of Act 369 renumbered Wis. Stat. § 165.08 to Wis. Stat. § 165.08(1), and amended this provision to give the Legislature a seat at the table when the Attorney General settles certain prosecution-side cases, meaning that the Legislature and the Attorney General must agree when giving up the client's—the State's—

interest in these cases. In particular, Section 26 provides that "[a]ny civil action prosecuted by the department . . . may be compromised or discontinued" only with the Legislature's approval, as intervenor; or, if there is no intervenor, with the approval of the Joint Committee on Finance ("JFC"). Wis. Stat. § 165.08(1). Prior to Act 369, Wis. Stat. § 165.08 provided that "[a]ny civil action prosecuted by the department by direction of any officer, department, board or commission, shall be compromised or discontinued where so directed by such officer, department, board or commission." *Id.* § 165.08 (2017). Civil actions prosecuted "on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued with the approval of the governor." *Id.*

Section 30 renumbered Wis. Stat. § 165.25(6)(a) to Wis. Stat. § 165.25(a)1 to give the Legislature a seat at the table when the Attorney General settles certain defense-side cases, meaning that the Legislature and the Attorney General must agree when giving up the client's—the State's—interest in defending the constitutionality or validity of state law. In particular, under the amended

statute, "if the action is for injunctive relief or there is a proposed consent decree, the attorney general may not compromise or settle the action" unless the Legislature, as intervenor, approves; or, if there is no intervenor, with the approval of the JFC. *Id.* Prior to Act 369, this statute stated that the Attorney General could compromise defense-side actions "as the attorney general determines to be in the best interest of the state." *Id.* § 165.25(6)(a) (2017).

Finally, Section 27 amended Wis. Stat. § 165.10 to provide that all settlement funds that the Attorney General collects and has authority to control would now go into the general fund and would no longer go into specific accounts, including Wis. Stat. § 20.455(3)(g), an account controlled by the Attorney General, subject to oversight by the JFC. In particular, prior to Act 369, Wis. Stat. § 165.10 provided that "before the attorney general may expend settlement funds under s. 20.455(3)(g) that are not committed under the terms of the settlement, the attorney general shall submit to the joint committee on finance a proposed plan for the expenditure of the funds." Wis. Stat. § 165.10 (2017). Section 27 amended Wis. Stat. § 165.10 to provide that "[t]he

attorney general shall deposit all settlement funds into the general fund." Wis. Stat. § 165.10. Sections 21 and 103(1) completed this reform by prohibiting the Attorney General from spending money that he previously deposited into the Wis. Stat. § 20.455(3)(g) account and then lapsing all of the remaining, unencumbered funds into the general fund. Wis. Stat. § 20.455(3)(g).

B. The Attorney General Nullifies A Significant Portion Of These Provisions

On June 17, 2019, the Attorney General sent a letter to Senator Alberta Darling and Representative John Nygren, the Chairs of the JFC (collectively, the "Chairs"), describing his interpretation and ongoing implementation of Sections 26 and 30. App. 63. As relevant here, the Attorney General explained that, under his view, Section 26 does not apply when there is "pre-suit resolution of disputes," when the Attorney General subsequently files a complaint and a consent judgment, or to cases where the court has entered a final judgment. *Id.* The Attorney General also explained that he interprets Section 30 not to apply to his decision to dismiss an appeal or not to take an appeal. *Id.* The Attorney

General thus made clear that he would not be submitting decisions that fell outside of his view of Sections 26 and 30 to the JFC for review and approval.

On June 21, 2019, the Chairs responded to the Attorney General's June 17, 2019 letter. App. 65. With regard to Section 26, this statute clearly provides that the Attorney General "cannot 'compromise[] or discontinue[]' '[a]ny civil action prosecuted' by [his] office, without obtaining the statutorily-required consent." *Id.* The Attorney General identified no legal basis for his conclusion that Section 26 did not apply to cases that he filed in court following pre-suit negotiations and then discontinued or settled with a consent judgment. *Id.* at 65–66. Similarly, the Attorney General offered no legal basis for his contention that this statute did not apply to cases in which an adverse final judgment had been entered but appellate review was available. *Id.* at 66. As to Section 30, the plain language of this statute applies to "*any* compromises or settlements" by the Attorney General, including written settlement agreements, decisions not to seek appellate review of an injunction blocking the laws of Wisconsin, or the

discontinuance of an appeal of such an injunction. *Id.* (emphasis in original). Finally, the Attorney General appeared to "be in violation of [Section 27]," which required that him deposit "all settlement funds into the general fund." *Id.* at 65. As of the date of the letter, it appeared that the Attorney General had not deposited any settlement funds into the general fund. *Id.*

The Attorney General replied to the Chairs on June 28, 2019. App. 70. The Attorney General asserted that Section 26 does not apply to pre-suit agreements because, in his view, when the Attorney General files a lawsuit for the purpose of seeking an enforceable consent judgment from the court, the court is "availing itself of judicial mechanisms for enforcing a resolution," not "in any meaningful sense *prosecuting* a civil action." *Id.* at 71 (emphasis in original). The Attorney General also asserted that Section 26 does not apply when he decides not to appeal. *Id.* at 72. As to Section 30, the Attorney General claimed that a decision not to appeal or to dismiss an appeal in a defense-side action is not, in his view, subject to Section 30 because these decisions "require[] the involvement of only one party." *Id.* Finally,

the Attorney General discussed Section 27, claiming that the application of this statute was complicated in several respects not relevant to this Petition. *Id.* As relevant here, the Attorney General claimed that Section 27 must be read to cover only those cases covered by Section 26. *Id.* at 73.

The Chairs responded on July 2, 2019. App. 74. The Attorney General was incorrect in his assertion that Section 26 did not apply to civil lawsuits filed after a pre-suit agreement because "once the Department files a civil lawsuit in court, it is plainly prosecuting a civil action, regardless of what negotiations led up to the filing." *Id.* at 75. As to both Sections 26 and 30, the decision not to appeal an unfavorable final judgment or to dismiss an appeal "is the quintessential compromise of the civil action" because these actions "deprive higher courts of jurisdiction to correct an erroneous trial court judgment, potentially having massive effects on the State's finances," or "leav[e] no appellate court with jurisdiction to correct a potentially erroneous[] injunction blocking the laws of this State." *Id.* at 76. Finally, Section 27 requires the Attorney General to deposit "*any funds*" that he "derives from *settling any legal dispute*" in the general

fund. *Id.* (emphasis in original). The Attorney General's attempt to limit this statute to cases requiring approval under Section 26 is atextual. *Id.* at 75–76. The Chairs also attached a memo, dated June 11, 2019, from the Legislative Fiscal Bureau, which showed that the Attorney General had received approximately $20.19 million in funds during the first five months of 2019 but had deposited no money into the general fund. *Id.* at 78. The Chairs demanded that the Attorney General deposit all settlement funds into the general fund by July 15, 2019 or explain where this money came from if not from settlements. *Id.* at 77.

The Attorney General responded on July 15, 2019. App. 82. The Attorney General called the Chairs' explanation regarding Section 26 a "conclusory assertion" but did not respond to the Chairs' legal analysis. *Id.* at 83. The Attorney General reasserted that Sections 26 and 30 do not apply to the decision not to appeal. *Id.* at 83–84. Finally, the Attorney General reasserted his claim that Section 27 applies to the same cases as Section 26. *Id.* at 85. He then bizarrely claimed that settlement funds "deposited into the general fund" need not even be "deposited as

nonappropriated receipts," *id.* at 84 (emphasis omitted), but could be "credited to the appropriation account under Wis. Stat. § 20.455(3)(g)." *Id.*

STANDARD OF REVIEW

Although there is no decision below for this Court to review, statutory interpretation presents a pure question of law. *Moustakis v. State of Wis. Dep't of Justice*, 2016 WI 42, ¶ 16, 368 Wis. 2d 677, 880 N.W.2d 142.

SUMMARY OF THE ARGUMENT

I. This Court should grant the Petition for Original Action, under well-established standards for deciding issues of great, statewide importance, where prompt, purely legal resolution is in the public interest. This case involves an effort by the Attorney General to effectively nullify a significant portion of the operation of several provisions in Act 369. Prompt resolution of this legal dispute is of the essence to the public interest because, absent this Court's action, the Attorney General has made clear that he will continue to settle cases without giving the Legislature its statutory seat at the table, and will continue to retain large

sums of money for his own use, when that money rightfully belongs to the people. And this case presents only purely legal issues of statutory interpretation, meaning that no factfinding by this Court would be needed.

II. The Attorney General's efforts to effectively nullify several provisions in Act 369 fail as a matter of law.

A. Section 26 provides that the Attorney General must give the Legislature a seat at the table in any compromise or discontinuance of "[a]ny civil action prosecuted" by the Attorney General. "Any civil action prosecuted," means just what it says, and is not limited by the Attorney General's claim—supported by no statutory text—that he can avoid giving the Legislature a voice by engaging in pre-lawsuit negations and then filing suit and settling.

B. Sections 26 and 30 provide, in relevant part, that the Legislature must have a seat at the table when the Attorney General "compromise[s]" the State's interest in certain litigations. Contrary to the Attorney General's submission, he cannot evade this requirement when he compromises the State's interests by declining to file a timely notice of appeal or dismissing a pending appeal.

These litigation actions are the *ultimate* compromise of the State's interests, as they often leave appellate courts with no jurisdiction to overturn, for example, a potentially erroneous injunction blocking the laws of this State. The State, as the client, must have a say when its lawyer seeks to abandon its core interests in litigation, and Sections 26 and 30 make clear that the Legislature has a seat at the table in the decision as to whether the State should give up its interests in defending one of the Legislature's laws.

C. Section 27 provides that "[t]he attorney general shall deposit settlement funds into the general fund." The plain meaning and context of this statute make clear that Section 27 requires the Attorney General to deposit *all* of the funds that he recovers from settlements and has the right to control into the general fund. The Attorney General's claim that this statute applies only to those settlements covered by his already unduly narrow view of Section 26's reach—thereby allowing him to retain moneys for his office's use that rightfully belong to the people—is entirely atextual.

ARGUMENT

I. The Controversy Between The Legislature And The Attorney General Involves Issues Of Great Public Importance, Warranting This Court's Assertion Of Its Original Action Authority

A. In deciding whether to grant a petition for original action, Wis. Const. art. VII, § 3, this Court looks to several considerations, with the most important factor being whether "the questions presented are of [great, statewide] importance," such as issues that are "*publici juris*." *Petition of Heil*, 230 Wis. 428, 443–46, 284 N.W. 42 (1939). Cases raising issues of separation of powers have often met this standard. *See, e.g.*, *Koschkee v. Taylor*, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600; *State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436; *State ex. rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 126 N.W.2d 551 (1964). As have cases brought by the Legislature, its committees, and members. *See, e.g.*, *Panzer v. Doyle*, 2004 WI 52, 271 Wis. 2d 295, 680 N.W.2d 666; *Risser v. Klauser*, 207 Wis. 2d 176, 558 N.W.2d 108 (1997); *Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 534 N.W.2d 608 (1995); *State ex rel. Wis. Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d

385 (1988); *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 264 N.W.2d 539 (1978). This Court also considers whether the petition raises some manner of "exigency." *Heil*, 230 Wis. at 447. And this Court is more likely to grant a petition where a "speedy and authoritative resolution" is possible due to limited material factual disputes, *id.* at 446, such that "no fact-finding procedure is necessary," *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978).

B. The purely legal questions presented by this Petition qualify for this Court's original action jurisdiction.

Most importantly, "the questions presented are of [great, statewide] importance," such that these issues are unquestionably "*publici juris*." *Heil*, 230 Wis. at 446–48.

The legal disputes as to the meaning of Sections 26 and 30 are of great statewide importance. As this Court recognized in asserting jurisdiction, on its own motion, over the appeals in *SEIU*, Sections 26 and 30 are deeply important provisions. Through his claimed interpretation of these provisions, the Attorney General is effectively nullifying a significant portion of these provisions, notwithstanding this Court's stay in *SEIU*. For example, the

Attorney General is taking the position that he can evade Section 26 by entering into litigation settlements through pre-lawsuit negotiations, and then filing a civil action and settling thereafter without legislative input. This evasion, if allowed to stand, has the effect of nullifying the Legislature's right to its seat at the table in important cases impacting the public fisc. Similarly, the Attorney General is taking the position that, under his understanding of Section 30, he can refuse to file a notice of appeal or can dismiss an already filed appeal in cases where a trial court blocks a Wisconsin law, so long as that compromise does not involve a settlement agreement. When the Attorney General seeks to compromise away state law, this imposes harm of the "first magnitude" on the "Legislature and . . . the people." App. 57. By unilaterally compromising away cases where he has not entered into a settlement agreement, the Attorney General continues to nullify the Legislature's statutory right to a seat at the table to protect the laws that it enacted.

The dispute as to the meaning of Section 27 is also of statewide importance. While Legislative Petitioners do not ask this Court to decide how much money the Attorney

General is unlawfully withholding from the general fund, in violation of this law, that amount appears to be a very large sum and growing. *See supra*, p. 11. This is the people's money, not the Attorney General's, and the Legislature has the constitutional authority to determine how this money should be spent. *See* Wis. Const. art. VIII, § 2. Absent this Court's action, the Attorney General will continue to retain this money illegally, depriving the Legislature of its constitutional right to appropriate these funds for the people's benefit. In addition, the Attorney General has taken the position that his interpretation of Section 27 turns entirely on his interpretation of Section 26, meaning that it makes sense for this Court to interpret both of these provisions together.

Granting this Petition is also important because the Legislature and the people will benefit from a "speedy and authoritative determination" as to the meaning of Sections 26, 27, and 30. *Heil*, 230 Wis. at 446. In its decision granting a stay of the temporary injunction blocking Sections 26 and 30 in *SEIU*, this Court explained that the Attorney General had admitted that he had unilaterally settled several cases

because of the temporary injunction. App. 57. This Court then held that even though the Circuit Court wrongly denied a stay, this Court "will not be able to direct the federal courts to vacate or reopen the judgments in those cases." *Id.* As a result, the Legislature and the people suffered irreparable harm in cases such *Allen v. International Association of Machinists*, No. 18-855 (S. Ct. Apr. 19, 2019), where the Attorney General compromised away an important provision of Wisconsin's right-to-work law without legislative input. *See infra*, pp. 30–31. Absent this Court's speedy holding and declaration that the Attorney General is incorrectly interpreting these provisions, the same harms—irreversible, illegal settlements, without legislative input—are sure to befall the people and the Legislature.

Finally, the questions that the Legislature presents here are issues of purely legal, statutory interpretation, where "no fact-finding procedure is necessary." *Kleczka*, 82 Wis. 2d at 683. Importantly, while the Legislature and the Attorney General may have other disagreements about the meaning of provisions in Act 369 or about the handling of specific cases or funds, Legislative Petitioners have

specifically and purposefully limited this Petition to just these purely legal questions, which this Court can decide by applying the statutory interpretation principles in *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110.

II. The Attorney General's Interpretation Of Sections 26, 27 And 30 Is Legally Wrong

"[S]tatutory interpretation begins with the language of the statute"—and, if the meaning of that language is plain—ends there. *Kalal*, 2004 WI 58, ¶ 45 (citations omitted). "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases" are at issue. *Id.* Context, structure and statutory history are important to plain meaning. "[S]cope, context, and purpose are perfectly relevant to a plain-meaning interpretation of an unambiguous statute as long as the scope, context, and purpose are ascertainable from the text and structure of the statute itself, rather than extrinsic sources, such as legislative history." *Id.* ¶ 48. And "[a] review of statutory history is part of a plain meaning analysis" because it is part

of the context in which we interpret statutory terms. *Richards v. Badger Mut. Ins. Co.*, 2008 WI 52, ¶ 22, 309 Wis. 2d 541, 749 N.W.2d 581; *see Kalal*, 2004 WI 58, ¶ 52 n.9; *Cty. of Dane v. Labor & Indus. Review Comm'n*, 2009 WI 9, ¶ 27, 315 Wis. 2d 293, 759 N.W.2d 571.

Applying these principles to the statutory interpretation of Sections 26, 27, and 30 of Act 369 shows that the Attorney General is plainly wrong, as a matter of law, in his interpretation of these provisions.

A. Section 26 Applies To "Any Civil Actions Prosecuted" By Attorney General, Without Regard To Whether There Have Been Pre-Suit Negotiations

Section 26 of Act 369 provides that "[a]ny civil action prosecuted by the department . . . may be compromised or discontinued" only if the Legislature, as intervenor, agrees; or, if the Legislature has not intervened, if the JFC approves. Wis. Stat. § 165.08(1).

The plain meaning of this provision is that the Legislature has a right to a seat at the table when the Attorney General "compromise[s] or discontinue[s]" *any* civil legal action that he filed in court, without regard to whether

there have been some manner of pre-suit negotiations. The "common, ordinary, and accepted meaning," *Kalal*, 2014 WI 58, ¶ 45, of "civil action" is "[a]n action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation," *Action*, Black's Law Dictionary (11th ed. 2019). And "prosecute" means "[t]o commence and carry out (a legal action)." *Prosecute*, Black's Law Dictionary (11th ed. 2019). Taken together, this language has an obvious, unambiguous meaning: the Legislature's rights under Section 26 obtain whenever the Attorney General "compromise[s] or discontinue[s]" any civil lawsuit that he has filed, without any caveats or exceptions.

2. The Attorney General's interpretation of Section 26—as not applying when there has been some manner of pre-suit negotiations, followed by a lawsuit filed by the Attorney General and a settlement—has no basis in the statutory text. In his June 28, 2019, and July 15, 2019, letters, the Attorney General asserted that Section 26 does not apply in cases in which he files a case following a pre-suit agreement so that a consent judgment can be entered because in these cases, the Attorney General "is not in any

meaningful sense *prosecuting* a civil action." App. 71, 83 (emphasis in original). Contrary to the Attorney General's assertions, Section 26 does not require him to prosecute an action in a "meaningful sense"—whatever that means—before the Legislature's right to a seat at the table obtains. Rather, Section 26 applies *whenever* the Attorney General prosecutes *any* civil action and thereafter compromises that action; that is when the Attorney General "commence[s] and carr[ies] out," *Prosecute*, Black's Law Dictionary (11th ed. 2019), "[a]n action brought to enforce, redress, or protect a private or civil right," *Action*, Black's Law Dictionary (11th ed. 2019). Clearly, when the Attorney General files suit, and then obtains money in a settlement soon thereafter, the Attorney General has settled a lawsuit that he prosecuted.

The Attorney General's interpretation of Section 26 is also inconsistent with statutory context and history. *See Richards*, 2008 WI 52, ¶ 22. Section 26 provides the Legislature with a seat at the table when the Attorney General compromises any civil actions that he is prosecuting. Under the Attorney General's interpretation, *see* App. 63, 71, 83, he could deny the Legislature a right to

review settlements that have a substantial impact on the public fisc by engaging in pre-suit negotiations and then filing a complaint and settling to the pre-negotiated terms. Yet, if the Attorney General first filed the lawsuit, and then engaged in the *same exact negotiations and entered into the exact same settlement*, the Legislature would have a statutory right to a seat at the table. Nothing in Section 26's plain text or statutory context supports such an illogical divergence between these two scenarios.

B. Sections 26 And 30 Apply When The Attorney General "Compromise[s]" His Defense Of State Law, Without Regard To Whether The Attorney General Obtains Concessions From Opposing Parties

Both Sections 26 and 30 of Act 369 provide that the Attorney General may not, as relevant here, "compromise[]" the litigation unless the Legislature, as intervenor, agrees; or, if the Legislature has not intervened, unless the JFC approves. Wis. Stat. §§ 165.08(1), 165.25(6)(a)1. In Section 26, the term "compromise[]" comes paired with "discontinue[]," Wis. Stat. § 165.08(1), whereas in Section 30,

"compromise[]" comes paired with "settle," Wis. Stat. § 165.25(6)(a)1.

The "common, ordinary, and accepted meaning," *Kalal*, 2004 WI 58, ¶ 45, of "compromise," as used in these two statutes, encompasses litigation action by the Attorney General to give up the State's interest in the case. In particular, "compromise," as used in these provisions, is best understood to mean "[t]o give up (one's interests[])." The American Heritage Dictionary of the English Language 274 (1st ed. 1980). This meaning of "compromise" as giving up one's "interests" encompasses decisions by the Attorney General not to timely file an appeal or to dismiss an already filed appeal. Those decisions are the *ultimate* litigation compromises because these leave no appellate court with jurisdiction to review a potentially erroneous decision blocking the laws of this State, or otherwise ruling against the State's litigation interests.

Although above-described definition of "compromise" is not the only possible definition of the term, it is the definition that is most consistent with statutory context and history. *See Kalal*, 2004 WI 58, ¶ 49 ("Many words have

multiple dictionary definitions; the applicable definition depends upon the context in which the word is used."); *Richards*, 2008 WI 52, ¶ 22.

The decision to end a case after a loss at the trial court—such as by not filing a timely appeal or dismissing an appeal—is for the client, not the lawyer, to make. Wisconsin Supreme Court Rules ("SCR") 20:1.2 (2017) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation . . . . A lawyer shall abide by a client's decision whether to settle a matter."). An attorney cannot, for example, decline to file a timely appeal or dismiss an appeal against the client's wishes and without the client's consent: "The client must decide whether to file an appeal and what objectives to pursue, although counsel may decide what issues to raise once an appeal is filed." *State v. Debra A.E.*, 188 Wis. 2d 111, 125–26, 523 N.W.2d 727 (1994).

The state officer who makes the decisions for the State as client is a more complicated issue than in the traditional attorney-client case, *see* SCR 20, pmbl. ¶ 18; before Act 369, Wis. Stat. §§ 165.08, 165.25(6)(a) provided that the identity of the official/bodies who had the authority to make the

decision usually committed to the client as follows. The Attorney General could only "compromise[]" a prosecution-side case with the agreement of the officer, department, board, or commission that authorized the suit, or, in other cases, with the Governor's agreement. Wis. Stat. § 165.08 (2017). The Attorney General could compromise defense-side actions "as the attorney general determines to be in the best interest of the state," without seeking approval from any other state official. Wis. Stat. § 165.25(6)(a) (2017). Put another way, in prosecution-side cases, these pre-Act 369 provisions put the Attorney General into cooperative relationships with the officer, department, board, commission, or Governor, to make the decisions usually reposed in the client, and, in defense-side case, statutory law gave the Attorney General the authority to make these decisions for the State unilaterally.

Act 369 amended these statutes to require the Attorney General to obtain the Legislature's agreement before compromising civil actions prosecuted by the Attorney General or compromising certain defense-side actions. Sections 26 and 30 thus provide that the Legislature and the

Attorney General now must work *together* to make the compromise decisions that are normally reposed in the client, including whether to file an appeal from an adverse decision and whether to dismiss an appeal. Under this cooperative statutory regime, both the Legislature and the Attorney General must agree if the Attorney General is to abandon the typical ends of litigation for the State or its officers, when sued in official capacity: defending state law and/or the public fisc.

2. The Attorney General's claim that "compromise[]," as used Sections 26 and 30, does not apply when the Attorney General declines to file a timely appeal or dismisses an appeal is legally wrong.[3] According to the Attorney General, Sections 26 and 30's "compromise[]" aspect applies whenever the Attorney General gets something in exchange for abandoning his defense of state law or the public fisc, but not where the Attorney General

[3] The Attorney General appears to concede that dismissing the appeal of a civil action prosecuted by the Attorney General qualifies as "discontinu[ing]" the civil action and is subject to the Legislative approval under Section 26. *See* App. 72.

does not get anything in exchange for such a compromise of the State's litigation interests.

The Attorney General's interpretation of the term "compromise[]" is contrary to the dictionary definition and statutory context, as discussed above. Both the text and statutory context make clear that Sections 26 and 30 give the Legislature a seat at the table with the Attorney General when making litigation compromise decisions that are usually committed to the client, such as declining to file a timely notice of appeal or dismissing an appeal. Nothing about the statutory text or context suggests that the Attorney General getting something in return for abandoning the State's litigation interests is relevant to the term "compromise[]."

That the Attorney General's position undermines the core purposes of Sections 26 and 30 is well-illustrated by the Attorney General's actions in *Allen*. In that case, the Attorney General defended an important provision of Wisconsin's right-to-work law before the district court and the Seventh Circuit. After the Seventh Circuit held that this provision was preempted by federal law, in a divided, 2-1

decision, *see Int'l Ass'n of Machinists Dist. Ten & Local Lodge 873 v. Allen*, 904 F.3d 490 (7th Cir. 2018), the Attorney General filed a petition for a writ of certiorari. Numerous *amici* filed briefs in support of the Attorney General's petition, including several States. However, after the Circuit Court temporary enjoined Section 30, the Attorney General entered into an agreement with the plaintiffs to dismiss the fully briefed certiorari petition, the day before the U.S. Supreme Court was set to consider the petition at its conference. *See Wisconsin Department of Justice Resolves Challenge to Wisconsin Law Regarding Dues Checkoff Authorizations* (May 31, 2019), *available at* https://www.doj.state.wi.us/sites/default/files/newsmedia/5.31.19_Machinists_Modified_Judgment.pdf (last visited July 31, 2019). Pursuant to this agreement, the Attorney General withdrew the petition, thereby abandoning his defense of state law. App. 86.

The *Allen* case shows the nonsensical nature of the Attorney General's understanding of Sections 26 and 30. Under the Attorney General's interpretation of Section 30, the Attorney General's decision to withdraw his petition in

Allen, pursuant to his agreement with the plaintiffs, would have required the Legislature's consent, absent the then-applicable temporary injunction. However, under the Attorney General's interpretation of Section 30's reach, his decision to withdraw the petition would not have required legislative input so long as the Attorney General had not entered into an agreement. Put another way, whether the Legislature got a seat at the table in the Attorney General's abandonment of state law would turn on whether the Attorney General got something in return for this surrender of the State's core interests on behalf of a state party. Nothing in the text or statutory context or history of Sections 26 and 30 supports such a nonsensical result.

C. Section 27 Requires The Attorney General "To Deposit All Settlement Funds Into The General Fund," And Is Not Limited By Section 26 In Any Respect

1. Section 27 of Act 369 provides that "[t]he attorney general shall deposit settlement funds into the general fund." Wis. Stat. § 165.10.

Section 27 could not be clearer, as a matter of plain, statutory text: the Attorney General must deposit *all*

moneys that he recovers and has authority to control from settlements into general revenue—the general fund, Wis. Stat. § 25.20—so that the Legislature can decide how this money is spent, pursuant to its constitutional authority. *See* Wis. Const. art. VIII, § 2. A settlement is "[a]n agreement ending a dispute or a lawsuit." *Settlement*, Black's Law Dictionary (11th ed. 2019). Thus, the meaning of Section 27 is that the Attorney General must deposit into the general fund all sums that he obtains and has authority to control from an agreement ending a dispute or a lawsuit.

Statutory context and history underscore Section 27's plain text as requiring the Attorney General to deposit *all* settlement funds that the Attorney General receives and has authority to control into the general fund, for general revenue. *Richards*, 2008 WI 52, ¶ 22; *Kalal*, 2004 WI 58, ¶ 48. Prior to Act 369, Wis. Stat. § 165.10 and Wis. Stat. § 20.455(3)(g) permitted the Attorney General to credit settlement funds into specific accounts, including Wis. Stat. § 20.455(3)(g), an account that the Attorney General controlled and could spend from, with JFC oversight. In Section 27, the Legislature changed this structure of

permitting the Attorney General to have presumptive control over settlement funds, subject to JFC oversight, to a regime where the Attorney General must deposit all settlement funds into the general fund for general appropriations. And then, the Legislature completed this reform, in Sections 21 and 103(1), by prohibiting the Attorney General from spending the settlement money that he previously deposited into the Wis. Stat. § 20.455(3)(g) account and lapsing all unencumbered funds into the general fund. Wis. Stat. § 20.455(3)(g).

A more granular understanding of the nature of the general fund makes this statutory context and history even more plain. The general fund consists of two types of revenues: general purpose revenues and program revenues. General purpose revenues "consist of general taxes, miscellaneous receipts and revenues collected by state agencies which are paid into a specific fund, *lose their identity, and are then available for appropriation by the legislature*." Wis. Stat. § 20.001(2)(a) (emphasis added). Program revenues "consist of revenues which are paid into the general fund and are credited by law to an appropriation

to finance a specified program or state agency." Wis. Stat. § 20.001(2)(b). Pursuant to Wis. Stat. § 20.906(1), there is a statutory presumption that "moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law." That means that by requiring the Attorney General to deposit money into the general fund, without any caveats or qualification, Section 27 required the Attorney General to ensure that this money flows to general revenue. *Accord* Legislative Reference Bureau, Wisconsin Bill Drafting Manual 2019–2020, § 20.01(2)(b) (distinguishing between "[m]oneys are 'deposited' into funds" and "[m]oneys . . . 'credited' to appropriation accounts within funds"); *State v. Popenhagen*, 2008 WI 55, ¶ 41 nn. 20 and 21, 309 Wis. 2d 601, 749 N.W.2d 611 (looking to the Bill Drafting Manual for statutory interpretation); *State v. James P.*, 2005 WI 80, ¶ 25, 281 Wis. 2d 685, 698 N.W.2d 95 (same).

2. The Attorney General's claim in his June 28, 2019 and July 15, 2019 letters that Section 27 applies only to funds collected from the settlement of civil actions under Section 26 is an atextual invention. App. 73, 85. Unlike

Section 26, Section 27 does not limit its application to "civil actions" or to situations in which the Attorney General is "prosecut[ing]" such a civil action. *Kalal*, 2004 WI 58, ¶ 46. Instead, as discussed above, the plain meaning of Section 27 makes clear that this statute requires the Attorney General to deposit all funds derived from an agreement to end any dispute or lawsuit in the general fund, for general revenue.

For the same reason, the Attorney General's claim in his June 28, 2019, and July 15, 2019 letters that Section 27 does not apply when the Attorney General derives settlement funds from a lawsuit filed after pre-suit negotiations—under the Attorney General's erroneous view of Section 26's reach, *see supra* pp. 21–31—is unsupported by the plain meaning of this statute. The language in Section 27 does not provide an exception for settlement agreements that result from pre-suit agreements. Indeed, the Attorney General's interpretation here would allow him to evade the plain purpose of Section 27—to provide that all settlement funds that the Attorney General recovers are for the people's, not the Attorney General's, use—by negotiating prior to filing a lawsuit, instead of after.

Finally, the Attorney General's bizarre assertion in his July 15, 2019 letter—that he can satisfy Section 27 by crediting settlement funds to the appropriation account under Wis. Stat. § 20.455(3)(g), App. 84—is an obvious, unlawful effort to retain for his office money that rightfully belongs to the people. As noted above, in Section 27, as well as in Sections 21 and 103(1), the Legislature repealed the prior regime where the Attorney General could credit settlement funds into specific accounts, include the Wis. Stat. § 20.455(3)(g) account, replacing this with a simple requirement that all Attorney General settlement funds are deposited into the general fund, for general revenue purposes. After all, "moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law." Wis. Stat. § 20.906(1); *accord* Legislative Reference Bureau, Wisconsin Bill Drafting Manual 2019–2020, § 20.01(2)(b). The Attorney General's statement would also render Sections 21, 27, and 103(1) a nullity by permitting the Attorney General to continue to deposit settlement funds into the Wis. Stat.

§ 20.455(3)(g) account, contrary to basic principles of statutory construction. *See Kalal*, 2004 WI 58, ¶ 44.

CONCLUSION

This Court should grant the Petition and reject the Attorney General's interpretation of Sections 26, 27, and 30 of Act 369.

Dated: August 1, 2019

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CERTIFICATION

I hereby certify that this memorandum conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) for a brief produced with a proportional serif font. The length of this memorandum is 6,565 words.

Dated this 1st day of August, 2019.

Misha Tseytlin
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EXHIBIT 3

BY THE COURT:

DATE SIGNED: March 23, 2020

Electronically signed by Susan M. Crawford
Circuit Court Judge

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 1 | DANE COUNTY

STATE OF WISCONSIN
Plaintiff
vs.
DIRECT CHECKS UNLIMITED SALES, INC.
Defendant

Order on Motion for Declaration

Case No. 2020CX01

The parties in this case have requested the entry of a consent judgment upon their stipulation. The Plaintiff, State of Wisconsin, separately moves the court for entry of a declaration addressing "whether the plaintiff State of Wisconsin has authority to enter the consent judgment without first obtaining approval from the Wisconsin Legislature's Joint Committee on Finance (JCF) under Wis. Stat. § 165.08(1)." The Defendant takes no position on this motion. No party has intervened representing the interests of the Joint Committee on Finance.

The Court declines to issue the declaration sought by the Plaintiff. The issue on which the declaration is sought is not justiciable as between the parties to this action. *See Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 29, 309 Wis. 2d 365, 380, 749 N.W.2d 211, 218.

The motion for declaration is hereby DENIED.